रजिस्ट्री सं. डी. एल.—33001/97

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भारत का राजपत्र
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सं. 35] नई दिल्ली, शनिवार, अगस्त 30, 1997/भाद्र 8, 1919
No. 35] NEW DELHI, SATURDAY, AUGUST 30, 1997/BHADRA 8, 1919

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

गृह मंत्रालय

(पुनर्वास प्रभाग)

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2121.—निष्क्रान्त संपत्ति प्रबंध अधिनियम, 1950 (1950 का 31) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा, गृह मंत्रालय, पुनर्वास प्रभाग में संयुक्त सचिव, श्री मु.कु. चट्टोपाध्याय को उक्त अधिनियम के द्वारा अथवा उसके अधीन महाभिरक्षक को सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से निष्क्रान्त संपत्ति का महाभिरक्षक नियुक्त करती है।

2. इसके द्वारा दिनांक 24-6-97 की अधिसूचना सं. 1(1)/94-बंदोबस्त (ख) का अधिक्रमण किया जाता है।

[सं. 1(1)94-बंदोबस्त (ख)]
सुरजीत सिंह, अवर सचिव

MINISTRY OF HOME AFFAIRS

(Rehabilitation Division)

New Delhi, the 6th August, 1997

S.O. 2121.—In exercise of the power conferred by section 5 of the Administration of Evacuee Property Act, 1950 (31 of 1950), the Central Government hereby appoints Shri S. K. Chattopadhyay, Joint Secretary in the Ministry of Home Affairs, Rehabilitation Division, as the Custodian General of Evacuee Property for the purpose of performing functions assigned to such Custodian General by or under the said Act.

2. This supersedes Notification No. 1(1)/94-Settlement(B), dated the 24th June, 1997.

No. 1(1)/94-Settlement(B)]
SURJIT SINGH, Under Secy

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2122.—विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा गृह मंत्रालय, पुनर्वास प्रभाग में संयुक्त सचिव, श्री सु.कु. चट्टोपाध्याय को उक्त अधिनियम के द्वारा अथवा उसके अधीन मुख्य बन्दोबस्त आयुक्त को सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से मुख्य बन्दोबस्त आयुक्त के रूप में नियुक्त करती है।

2. इसके द्वारा दिनांक 24-6-97 की अधिसूचना सं. 1(1)/94-बंदोबस्त (क) का अधिक्रमण किया जाता है।

[सं. 1(1)/94-बंदोबस्त (क)]
सुरजीत सिंह, अवर सचिव

New Delhi, the 6th August, 1997

S.O. 2122.—In exercise of the power conferred by sub-section (i) of section 3 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri S. K. Chattopadhyay, Joint Secretary in the Ministry of Home Affairs, Rehabilitation Division, as Chief Settlement Commissioner for the purpose of performing the functions assigned to such Chief Settlement Commissioner by or under the said Act.

2. This supersedes Notification No. 1(1)/94-Settlement(A) dated the 24th June, 1997.

[No. 1(1)/94-Settlement(A)]
SURJIT SINGH, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 27 मई, 1997

(आयकर)

का.आ. 2123.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23-ग) के उपखण्ड (V) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्-द्वारा "सद्र अंजुमन अहमदिया, कादियां, पंजाब" को कर-निर्धारण वर्ष 1997-98 से 1999-2000 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :—

(i) कर-निर्धारिती इसकी आय का इस्तेमाल अथवा इसकी आय का इस्तेमाल करने के लिए इसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा, जिनके लिए इसकी स्थापना की गई है ;

(ii) कर-निर्धारिती ऊपर-उल्लिखित कर-निर्धारण वर्षों से संयत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से इसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा रख-रखाव में स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा ;

(iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी जो कि कारोबार से प्राप्त लाभ तथा अभि-लाभ के रूप में हो जब तक कि ऐसा कारोबार उक्त कर-निर्धारिती के उद्देश्यों की प्राप्ति के लिए आनुषंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा-पुस्तिकाएं नहीं रखी जाती हों।

[अधिसूचना सं. 10368/फा.सं. 197/9/97-आयकर नि-I]
एच. के. चौधरी, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 27th May, 1997

(Income Tax)

S.O. 2123.—In exercise of the powers conferred by sub-clause (v) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies "Sadr Anjuman Ahmadiyya, Qadian, Punjab" for the purpose of the said sub-clause for the assessment years 1997-98 to 1999-2000 subject to the following conditions, namely :—

(i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;

(ii) the assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;

(iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 10368/F. No. 197/9/97-ITA-I]
H. K. CHOUDHARY, Under Secy.

नई दिल्ली, 9 जुलाई, 1997

(आयकर)

का.आ. 2124.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 80-छ की उपधारा (2) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्द्वारा अरियाकुडी पेरुमल ट्रस्ट, अरियाकुडी तमिलनाडु द्वारा संचालित "अरियाकुडी तिरुवेंनगाडमुडयान टैम्पल" को समूचे तमिलनाडु राज्य और आस-पास के अन्य राज्यों में एक ख्याति प्राप्त सार्वजनिक पूजास्थल के रूप में उक्त धारा के प्रयोजनार्थ विनिर्दिष्ट करती है।

यह अधिसूचना केवल 1.30 करोड़ रु० (एक करोड़ तीस लाख रु. मात्र) तक के मरम्मत/जीर्णोद्धार संबंधी कार्य के लिए ही वैध होगी।

[अधिसूचना सं. 10382/फा.सं. 176/27/97-आयकर नि-I]
एच. के. चौधरी, अवर सचिव

New Delhi, the 9th July, 1997

(Income Tax)

S.O. 2124.—In exercise of the powers conferred by clause (b) of sub-section (2) of Section 80G of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies "Ariyakudi Thiruvengadamudayan Temple" managed by Ariyakudi Perumal Trust, Ariyakudi, Tamil Nadu, to be a place of public worship of renown throughout the State of Tamil Nadu and other nearby States for the purpose of the said Section.

This notification will be valid only for the repair/renovation work to the extent of Rs. 1.30 crore (Rupees One Crore and Thirty lakhs only).

[Notification No. 10382/F. No. 176/27/97-ITA-I]

H. K. CHOUDHARY, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 14 अगस्त, 1997

का.आ. 2125.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ख) और धारा 20 की उपधारा (1) के अनुसरण में केन्द्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श से, एतद्द्वारा श्री ओ.पी. सेतिया, वर्तमान उप प्रबंध निदेशक, भारतीय स्टेट बैंक को, उनके द्वारा कार्यभार ग्रहण करने की तारीख से 31-10-98 तक की अवधि के लिए भारतीय स्टेट बैंक के प्रबंध निदेशक के रूप में नियुक्त करती है।

[सं. एफ 8/4/97-बी.ओ-I]
सुधीर श्रीवास्तव, निदेशक

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 14th August, 1997

S.O. 2125.—In exercise of the powers conferred by clause (b) of section 19 and sub-section (1) of section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, after consultation with Reserve Bank of India, hereby appoints Shri O. P. Setia, presently Deputy Managing Director, State Bank of India, as the Managing Director, State Bank of India, for the period from the date of his taking charge and upto 31st October, 1998.

[F. No. 8/4/97-B.O. I]
SUDHIR SHRIVASTAVA, Director

नई दिल्ली, 14 अगस्त, 1997

का.आ. 2126.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ख) और धारा 20 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा श्री एम.पी. राधाकृष्णन, वर्तमान उप प्रबंध निदेशक, भारतीय स्टेट बैंक को, उनके द्वारा कार्य-भार ग्रहण करने की तारीख से 31-1-1999 तक की अवधि के लिए भारतीय स्टेट बैंक के प्रबंध निदेशक के रूप में नियुक्त करती है।

[सं. एफ. 8/5/97-बीओ-I]
सुधीर श्रीवास्तव, निदेशक

New Delhi, the 14th August, 1997

S.O. 2126.—In exercise of the powers conferred by clause (b) of section 19 and sub-section (1) of section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, after consultation with Reserve Bank of India, hereby appoints Shri M. P. Radhakrishnan, presently Deputy Managing Director, State Bank of India, as the Managing Director, State Bank of India, for the period from the date of his taking charge and upto 31st January, 1999.

[F. No. 8/5/97-B.O. I]
SUDHIR SHRIVASTAVA, Director

दिल्ली विकास प्राधिकरण

सार्वजनिक सूचना

नई दिल्ली, 27 अगस्त, 1997

का.आ. 2127.—केन्द्रीय सरकार का दिल्ली की मुख्य योजना/क्षेत्रीय विकास योजना में निम्नलिखित संशोधन करने का प्रस्ताव है, जिसे एतद्द्वारा जनता की जानकारी के लिये प्रकाशित किया जाता है। यदि किसी व्यक्ति को प्रस्तावित संशोधन के संबंध में कोई आपत्ति हो अथवा

कोई सुझाव देना हो तो वह अपनी आपत्ति या सुझाव लिखित रूप में इस सूचना के जारी होने की तिथि से तीस दिनों की अवधि के अन्दर सचिव, दिल्ली विकास प्राधिकरण, विकास सदन, "बी" ब्लाक, आई.एन.ए., नई दिल्ली को भेज सकते है। आपत्ति करने/सुझाव देने वाले व्यक्ति अपना नाम और पता भी दें।

संशोधन

"उत्तर में रोहतक को जाने वाली उत्तर रेलवे लाईन से, पश्चिम में राष्ट्रीय राजधानी क्षेत्र की सीमा से, दक्षिण में राष्ट्रीय राजमार्ग सं. 10 (100 मीटर मार्गाधिकार) से और पूर्व में मौजूदा शहरी क्षेत्र (नांगलोई जे.जे. स्कीम) से घिरे हुए लगभग 556.5 हैक्टेयर (1381.25 एकड़) क्षेत्र के भूमि उपयोग को "ग्रामीण उपयोग" से "शहरी उपयोग"— जिसमें आवासीय 112.1 हैक्टेयर, मनोरंजनात्मक 105.8 हैक्टेयर, औद्योगिक (हल्के विनिर्माण)- 264.8 हैक्टेयर, व्यावसायिक (थोक एवं भंडागार) 63.3 हैक्टेयर एवं परिचालन 10.5 हैक्टेयर क्षेत्र शामिल है, में बदलने का प्रस्ताव है।"

2. प्रस्तावित संशोधनों को दर्शाने वाला नक्शा निरीक्षण हेतु संयुक्त निदेशक, मुख्य योजना अनुभाग, विकास मीनार, छठी मंजिल, आई.पी. एस्टेट, नई दिल्ली के कार्यालय में उपर्युक्त अवधि के अन्दर सभी कार्य-दिवसों में उपलब्ध रहेगा।

[सं. एफ. 20(9)/97-एम.पी.]

विश्व मोहन बंसल, आयुक्त एवं सचिव

DELHI DEVELOPMENT AUTHORITY

PUBLIC NOTICE

New Delhi, the 27th August, 1997

S.O. 2127.—The following modification which the Central Government proposes to make to the Master Plan/Zonal Development Plan for Delhi, is hereby published for public information. Any person having any objection or suggestion with respect to the proposed modification may send the objection or suggestion in writing to the Secretary, Delhi Development Authority, Vikas Sadan, 'B' Block, INA, New Delhi within a period of thirty days from the date of issue of this notice. The person making the objection or suggestion should also give his name and address.

MODIFICATION

"The land use of an area measuring about 556.5 ha. (1381.25 acres) bounded by Northern Railway line to Rohtak in the North, boundary of National Capital Territory in the West, National Highway No. 10 (100 M R/W) in the South and existing urban area (Nangloi JJ Scheme) in the east, is proposed to be changed from 'rural use' to urban uses comprising of residential 112.1 ha., recreational—105.8 ha., industrial (light manufacturing)—264.8 ha. Commercial (wholesale and warehousing)—63.3 ha. and circulation 10.5 ha."

2. The plan indicating the proposed modification will be available for inspection at the office of Jt. Director, Master Plan section, Vikas Minar, 6th floor, I.P. Estate, New Delhi on all working days within the period referred to above.

[No. F. 20(9)/97-MP]

V. M. BANSAL, Commissioner-cum-Secy.

श्रम मंत्रालय

नई दिल्ली, 31 जुलाई, 1997

का.आ. 2128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी.एल. के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1) धनबाद, के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 30-7-97 को प्राप्त हुआ था।

[एल-20012/355/94-आई आर (सी-I)]

सनातन, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 31st July, 1997

S.O. 2728.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their work-

men, which was received by the Central Government on 30-7-1997.

[No. L-20012/355/94-IR(C-I)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1. DHANBAD.

In the matter of a reference under Sec. 10(1)-(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 109 of 1995

PARTIES :

Employers in relation to the management of Moonidih Project of M/s. BCCL.

AND

Their Workmen.

PRESENT :

Shri Tarkeshwar Prasad,

Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : None.

State : Bihar. Industry : Coal.

Dated, the 24th July, 1997.

AWARD

By Order No. L-20012/355/94-I.R. (Coal-I) dated 5-9-1995 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to the Tribunal :—

"Whether the action of the management of Moonidih Project of M/s. BCCL in dismissing Shri Kartik Mallik (T. No. 7315) w.e.f. 10-12-92 is justified? If not, to what relief the concerned workman is entitled?".

2. The order of reference was received in this Tribunal on 12-9-1996. Thereafter notices were issued to the parties to file written statement on behalf of the workmen. After filing written statement the concerned workman or the union stopped appearing to take further step. Thereafter registered notice was issued to the sponsoring union, but inspite of that none appeared on behalf of the workmen. It, therefore appears that neither the concerned workman nor the sponsoring union is interested to prosecute the case.

3. In such circumstances, I render a 'no dispute' award in the present reference case.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हैवी व्हिकल्स फैक्ट्री, अवादि के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[सं. एल-42012/257/94-आईआर(डीयू)]
के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Heavy Vehicles Factory, Avadi and their workman, which was received by the Central Government on the 6-8-1997.

[No. L-42012/257/94-IR (DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Tuesday, the 15th day of April, 1997

PRESENT :

THIRU S. THANGARAJ, B.Sc., LLB.,

INDUSTRIAL TRIBUNAL.

Industrial Dispute No. 13 of 1996

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I. D. Act, 1947 between the Workmen and the Management of HVF, Avadi, Madras-600 001).

BETWEEN

Shri G. Elumalai, C/o. Govindan, No. 63, Pillayar Koil St., Veeraragavapuram, Madras-600 077.

AND

The General Manager, HVF Avadi, Madras—600 001.

REFERENCE :

Order No. L-42012/257/94-IR (DU), Ministry of Labour, dated 30-1-1996, Government of India, New Delhi.

This dispute coming on for final hearing on this day, upon perusing the reference, claim statement and all other material papers on record, and upon hearing of Th. V. Ramasubramanian and R. Ravi, Advocates appearing for the petitioner and the respondent being absent and set exparte, this dispute having stood over till this day for consideration, this Tribunal made the following :—

AWARD

This reference has been made for adjudication of the following issue :

"Whether the action of the management of HVF Avadi in terminating the services of Shri G. Elumalai w.e.f. 28-5-1983 is justified ? If not, to what relief the workman is entitled to ?"

WW-1 examined in chief, Exs. W-6 and W-7 marked. The Government of India by their reference No. L-42012/257/94-IR (DU), Ministry of Labour dated 30-1-1996, referred this dispute u/s. 10(1)(d) of the I. D. Act, to this Tribunal to adjudicate the non-employment of the workman. Ex. W-5 the failure report submitted by the Asstt. Labour Commissioner (Central II) Madras shows that the respondent-management had stated that they are not an industry and independent under the Industrial Disputes Act, 1947 and the petitioner was only a contract workman and his work came to an end on the expiry of the contract. However the respondent has not chosen to appear before this Tribunal. If the respondent was sincere in their attempt they should have appeared and put forth their case before this Tribunal for adjudication. Though notice was served on them they thought fit to remain exparte and this Tribunal had set them exparte. The two reasons stated by the respondent are the main questions involved in the industrial dispute. However, without any document or oral evidence on the side of the respondent and without the participation of the respondent those two questions cannot be decided as expected in law. From evidence available on record, the petitioner has stated that he has worked for 240 days within a span of 12 consecutive months and his termination is not in accordance with law. Ex. W-6 and W-7 show that the petitioner has worked in under the control of the respondent. The respondent has also not denied the same. Therefore, there is a prima facie case to show that the petitioner was working under the respondent management. As the respondent has not produced any evidence to substantiate its contention that the services of the petitioner came to an end and on the expiry of the contract period, we have to take into consideration of evidence of petitioner. As petitioner has stated that he has worked under the control of the respondent, from 1987 to 28-5-1993, and as no acceptable evidence is available on the side of the respondent to hold that his termination was as per law, the contention of the petitioner has to be accepted prima facie. As there is prima facie case on the side of the petitioner an exparte award has to be passed as prayed for by the petitioner.

In the result, award passed for reinstatement, continuity of service, and all other attendant benefits. No costs.

Dated, this 15th day of April, 1997.

Sd./-

Industrial Tribunal

WITNESSES EXAMINED

For Petitioner/workman : W.W. 1 : Thiru G. Elumalai.

For Management : None.

DOCUMENTS MARKED

For Petitioner/workman :

Ex. W-1/18-6-93 : Letter from petitioner to respondent requesting to take him for job (xerox copy).

W-2/ : Respondent's acknowledgement for having received Ex. W-1 (xerox copy).

W-3/1-9-93 : Letter from Asstt. Labour Commissioner to petitioner (xerox copy).

W-4/19-7-93 : Petition under Section 2(A) before the Labour Commissioner (Central) (xerox copy).

W-5/28-11-94 : Conciliation failure report (xerox copy).

W-6/ : Xerox copy of certificate issued by Addl. General Manager, HVF to the petitioner.

W-7/24-12-92 : Xerox copy of certificate issued by Mr. T. Adamiants to petitioner.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऐटॉमिक एनर्जी सेन्ट्रल स्कूल, नरौरा के प्रबन्धतन्त्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5/8/97 को प्राप्त हुआ था।

[सं. L-42012/166/86-डी-II (बी)]

के. बी. बी. उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Atomic Eeergy Central School, Narora and their workman, which was received by the Central Government on the 5-8-1997.

[No. L-412012/160/86-D. II (B)]

K. V. B UNNY, Desk Officer.

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI.

I. D. No. 71/87

In the matter of dispute BETWEEN :

Shri Umesh Chandra Sharma S/o. Shri Munna Lal Sharma Resident of Village and P. O. Ramghat, District Bulandsheher (U.P.).

VERSUS

1. Union of India.
2. The Chairman, Atomic Energy Education Society, Anu Shakti Nagar, Bombay-96 (Pin. 400 094).
3. The Principal, Atomic Energy Central
4. The Chairman, Local Management Committee, Atomic Energy Central School-cum-Director, Atomic Energy Centre, School, Narora, District Bulandsher (U.P.).
5. Labour Commissioner, Central Hutment, Dalhousi Road, Delhi.

APPEARANCES :

Workman in person.

Shri V. K. Upadhaya Vice Principal for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/160/86-D. II (B), dated 14-8-1987 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Atomic Energy Central School, Narora in refusing employment to Shri Umesh Chandra Sharma, Helper-cum-Peon w.e.f. 16-5-1986 is legal and justified ? If not to what relief the workman entiteld to ?"

2. Shri Umesh Chandra Workman in his statement of claim has alleged that he was appointed as Peon in Atomic Energy Central School, Narora vide letter dared 3-7-1984 by respondent No. 3 after observing the due procedure of advertisement of the post and interview. He joined the duties w.e.f. 10-7-1984 and continuously worked till 20-10-1984 for 105 days to the satisfaction of his superiors. He was again called for duty from 21-11-1984 to 25-11-84 for 5 days. He was again asked to join as helper and served as watchman on 19-7-1985 to 14-5-86 for 300 days. Overtime was also done by him for 3 hours daily, but he was not paid for the overtime. The job on which he was appointed continued and existed and there was no occasion for any retrenchment. He had rendered his service in all for 404 days as regular employee. The post on which he was working was readvertised for fresh appointment without any order of termination and he was never served with a notice prior to termination of service nor paid any emoluments in lieu of the notice. He also sent registered letters and telegrams and the last two letters were clearly returned as refused or unclaimed by the management. The termination of the workman without any notice was illegal and against all principles of natural justice. The petitioner was considered as in the employment as delay wages but was never treated as such and was being paid Rs. 222/- P.M. The management refused to keep the workman and he was entitled to reinstatement with back wages.

3. The Management in its reply alleged that the school in question was run by A.E. Education Society Bombay which was a body registered under the Societies Registration Act, 1860. It was not "Industry" and not run with the authority of the Central Government. The Central Government as such was not appropriate Government under the provisions of the I. D. Act. This Tribunal had got no jurisdiction to adjudicate this case. On merits it was alleged that the workman had himself abondoned the job and one Vijay Kumar Clerk of the school had met the workman and asked him to resume duty but the workman told him that he was not interested to join the duty against ad-hoc appointment. It was further denied that he worked over time. The Management did not retrench the workman as he had himself abondoned the job.

4. The Management examined Shri R. C. Shukla Principal MW-1 and Shri Vijay Babu Clerk MW-2. The workman himself appeared as WW-1.

5. I have heared the representatives for the parties and have gone through the record.

6. The representative for the management has alleged that both the witnesses examined by the management have stated on oath about the status of the school which was running under a duly registered society and have also stated in their affidavit that the workman had abondened the job. It has further been urged by the representative for the management that the workman has not cross-examined the witnesses of the management though opportunity had been granted to him many times. His request for recalling the witnesses for cross examination was also declined by the court at a later stage and the evidence of the management, therefore, stood unchallenged.

7. The workman representative on the other hand has urged that the workman was a person with no experience and once he had been engaged by the management and had worked for 400 days the services of the workman could not be terminated by the management of its own. Moreover, even if the workman himself had not turned up for duty it was the duty of the management to make enquiry regarding the abondonment. He has further urged that according to different authorities of the Hon'ble Supreme Court the workman who has completed more than 240 days his services could not be terminated without any notice, notice pay or retrenchment compensation. An enquiry was necessary in case of abondonment of service by such workman. On careful perusal of the points urged before me by the representatives for the parties, I am of the considered opinion that there is not much force in the pleas taken by the management. The objection raised by the management that this Tribunal has got no jurisdiction was not sustainable because no territorial jurisdiction of this Tribunal has been defined in any enactment under the Industrial Disputes Act. This is a Central Government Industrial Tribunal which deals with references made to it by the Government of India irrespective of the place where the cause of action place. References are received by this Tribunal relating to disputes of the parties residing at different places in the country. Any case where the Central Government is appropriate Authority can be referred to this Tribunal. The Central Schools being under the Government of India fall in that category.

8. A perusal of the points urged by the representatives for the parties lead me to the conclusion that the case of the workman could be considered by this Tribunal. The Management admits non-service of the notice of termination and non-payment of notice pay in lieu of the notice. No payment of retrenchment compensation was alleged in this case by the management. There are two questions for considerations before this Tribunal which are as follows :—

"1. Whether services of an ad-hoc appointee who has completed 240 days of working, can be terminated without any notice or notice pay and without retrenchment compensation ?

2. Whether an enquiry is necessary in case of abondonment of service by the workman ? Answer to the first question is No and answer to the second question is Yes."

If termination of service of a workman is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories under Sub-Clauses (a), (b), (bb) and (c) of Section 2(00). Once the case does not fall in any of the excepted categories, the termination of service even if it be according to automatic discharges from service under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(00). The above legal proposition has been laid down in a plethora of Judgements rendered by Hon'ble Supreme Court. The cases are cited below :—

1. Hari Pd. Shiv Shankar Shukla Vs. A. D. Diwakar AIR 1957 SC 121.

2. State Bank of India Vs. Indra Money AIR 1976 SC 1111.

In view of the law laid down in the above cited cases is that the termination embraces not merely act of termination by the employer but the fact of termination, however made. If the termination is without compensation is in violation of Section 25-F of the Industrial Disputes Act, the termination becomes bad and the same is liable to be set aside and the workman is entitled to be reinstated with full back wages and continuity of service.

Plea of abendonment of service setup by the management came before Hon'ble Supreme Court in Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherjee where the management struck the name of the workman from the rolls of the company for continued absence without leave. The Hon'ble Supreme Court upheld the contention of the workman and held that the termination amounted to retrenchment and that same is invalid and had in law for non-compliance of requirement of Section 25-F of the Industrial Disputes Act. The enquiry is a must where the management pleads abondonment of service. This view was upheld by Supreme Court in FLR 1987 (55) page and Bombay High Court in Eagle Spining Industries (P) Ltd. Vs. Gauri Shankar as reported in FLR 1987 (55) page 689. Notice of demand is dated 19-5-1986 to which there is no reply and no cross-examination of WW-1. Postal Receipt and A. D. WW-1/7. The plea of abondonment of service by the workman and the version of Vijay Kumar meet there waterloo.

The workman is unemployed. He is pursuing adjudication for the last seven years."

9. In view of my discussions above I am of the opinion that the termination of the workman was in violation of the principles and law as laid down by the Hon'ble Supreme Court under the I. D. Act. He deserves to be reinstated with full back wages as Peon from the date of his termination upto date which payment be made within 3 months from the date of the publication of this award. Parties are, however, left to bear their own costs.

1st August, 1997.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 6 अगस्त, 1997

का.आ. 2131.—औद्योगिक विवाद अधिनियम, 1947 (1947का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार शुगरकेन ब्रिडिंग इंस्टीट्यूट, कोइम्बटूर के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[सं० एल-42011/21/92-आईआर(डीयू)]

के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hreeby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sugarcane Breeding Institute, Coimbatore and their workman, which was received by the Central Government on the 6-8-1997.

[No. L-42011/21/92 IR(DU)]

K. V. B. Unny, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Wednesday, the 19th day of March 1997

PRESENT :

THIRU S. THANGARAJ, B.Sc., L.L.B., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 23 of 1993

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Sugarcane Breeding Institute, Coimbatore)

BETWEEN

The workmen represented by the Secretary, Sugarcane Breeding Institute, Farm Labour Union, Coimbatore—641007.

AND

The Director, Sugarcane Breeding Institute, Coimbatore—641007.

REFERENCE :

Order No. L-42011/21/92-IR(DU), Ministry of Labour, dated 18-2-1993 Govt. of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 19th day of February 1997, upon perusing the claim, counter statements and all other material papers on record, and upon hearing of Thiru K. Chandru, Advocate appearing for the Petitioner and of Thiru P. Narasimhan, and K Srinivasan, Advocates appearing for the respondent management, and this dispute having stood over till this day for consideration, this ribunal made the following :

AWARD

Government of India, vide their Order No. L-42011/21/92-IR(DU), Ministry of Labour, dated 18-2-1993, have referred this dispute under Section 10(1)(d) of the I.D. Act, 1947 for adjudication of the following issue :

"Whether the management of Sugarcane Breeding Institute, Coimbatore is justified in denying employment to 153 daily rated workmen, as per details in Annex. A, with effect from 30-1-1992? If not, to what relief the workmen are entitled to ?"

2. On services of notices, both the petitioner and the respondent filed their claim and counter statements respectively.

3. The main averments found in the claim statement filed by the Petitioner-union are as follows:

The respondent is the Sugarcane Breeding Institute at Coimbatore. The workman concerned in the dispute were employed in the respondent Institute. For loading of sugarcane in lorries 8 male workers and four female workers were being provided and they had to finish work within four hours. On 30-1-1992, 5 male workers and four female workers were provided for the work and the respondent's officers insisted them to load lorries within the time without sufficient hands The Farm Superintendent also did not heed to the requests of the workers workers pleaded their inability to lad the lorry within the time misant sufficient hands. The Farm Superintendent also did not heed to the requests of the workman and threatened that they would mark absent for those workmen. The workmen represented the matter to Shri Loganathan, President of the union. Though the workman did their duty of loading sugarcane from 7.00 a.m. to 11.30 a.m. they were marked absent on 31-1-1992 when they returned from work, the officers of the respondent refused to take muster roll. The workmen reported the matter to the Head of the Division of Crop Production and he advised them to go to the work spot with a promise that he would take up the matter to the higher officials. However, he did not turn up. The workmen met the Director of the Institute who advised them to report for duty on 3-2-1993. When they reported for duty on 3-2-1993, the officials of the respondent asked each one of them to sign an undertaking in a cyclostyled form and then resumed work. The said form contained unreasonable conditions and also the increase of work load by more than 50%. When the workmen refused to sign the form, the respondent institute sent them out. The denial of work to 153 workmen is totally unjustified. It amounts to termination which is violative of Sec. 25F of I.D. Act, 1947. The respondent had not sought for prior approval of the Central Government before retrenching these workmen by giving notice as provided uls. 25N of the I.D. Act and so the termination is abinitio void. The respondent institute instead of behaving like a model employer have resorted to unfair labour practice and deprived the right of livelihood of 153 workmen. The denial of employment from 30-1-1992 is not justified and award may be passed for the reinstatement with continuity of service, full backwages and all other attendant benefits.

4. The main averments found in the counter by the respondent are as follows :

Sugar Cane Breeding Institute, Coimbatore was started in the year 1912. It is purely a research organisation and it is not for any profit motive as per its mandate. The Institute never denied work to 153 casual labourers. The respondent used to engage them as per the requirements of agricultural operations. On 29-1-1992 Forenoon session work, five men and four women were allotted for loading of sugar cane in the lorry. They adopted go slow process and they did not heed to the advise of the maistry. They started the work by 7.00 a.m. but did not complete the work until 11.30 a.m.In the afternoon, they were instructed to complete the work. The labourers loaded the lorry, out the cranes, but did not bundle them and carry them to the road purposely despite having plentry time left. This was reported to the Farm Superintendent on 29-1-1992 evening. Although the workmen did not complete the work on 29-1-1992, they were marked present in the attendance register on that day. On 30-1-1992, the Farm Superintendent advised them to finish the previous day's work and bundle and carry the cut canes and to harvest 50 rows of sugarcane. Loading work was allotted in the afternoon session. They completed the work allotted to them in the forenoon session. When they were informed to go for loading sugarcane in the lorry they argued with Farm Manager in loud noise and demanded to allot them some other work. All the workers working in other places also gathered there. The Farm Superintendent advised them to go to work. Since the harvested canes had to go to the factory immediately to avoid the loss of weight and of sugar content, however, the workers refused to do the work demanding some other work for themselves. Shri Loganathan who was working in another fields came there in support of the demand of the workers and asked the Superintendent to allot the workers some other work. Finally the Farm Superintendent had no other option but to warn the labourers to go for loading or also they would have to be marked absent for the afternoon session on 30-1-1992. Shri Loganathan went to every laboratory and fields and made the workers to leave their work abruptly. All the workers assembled near the farm office and made loud noise. This was led to sudden disruption of operation in the research fields of the Institute. As a result, the research work of the Institute suffered. On 31-1-1992, when the morning muster call bell rang, only some of the workers came inside the farm premises and other squatted outside farm office scolding using abusive epithets, shouting and threatening the other labourers and farm staff who came to work. Normally seven men and 2 women labourers are allotted to load the harvested sugar cane to the lorry and this work is normally completed in two hours. On earlier occasions even less number of men and women had also completed the work. The women will tie the loose bundles and the bundles will be lifted from the fields to the road. These women will give small bundles to the 2 men standing on separate barrels and who in turn will be lifting them to the men standing on the lorry. One of the male members standing on the lorry will out the producing canes to ensure proper stacking. Since transporting and loading are done by the casual labourers it has been their practice to make the bundles small for the convenience of loading into the lorry. If the sugarcanes are not transported immediately sucrose content from the sugarcane would go down to a lower level and thereby reducing the sugar yield per tone of sugarcane. The casual labourer is engaged depending upon the requirements of the work and it would be impossible to allot work to each and every worker according to his/her wish or own choice likes and dislikes. The purpose for which the institute was started will be futile if the labourers take law into their hands, and refuse to obey directions of their superiors. The work load have been drawn up based on several years of experience on various operations gavined over these years. Factually, the work load is clearly very reasonable and much below as compared to work allotment by Private agricultural farmers. The Institute is following the same method of allotment of work to the casual labourers all these years. The contention of the petitioner that the Institute was trying to push them to enter into a slave agreement is malidious and intended to distort the truth and bring disrepute to the Institute which has produced so much results for the benefit of the country as a whole. The Institute has not violated Sec. 25F of the I.D. Act, 1947 as alleged by the petitioner. At no stage Institute terminated their service. It was the petitioners themselves who wilfully and illegally abstained from work without any notice to the organisation despite the persuassion and the respondent himself advising them to return to work. The Institute has already indicated, has not retrenched the workmen as contended by the petitioners. This Institute is solely governed by Government of India regulations on engagement of labour and corresponding benefits to them. Truly, this Institute has always continued to act as model employer. The wages paid to the casual labourers are at Central Government rates. Casual labourers are being provided the benefits of Employee's Provident Fund as per the regulations in force. Perusal for extending gratuity benefits had already been sent to Indian Council of Agricultural Research and Department of Agriculture and Education, Ministry of Agriculture, Government of India. The regulation of casual labour is being done as per Government of India Policy decision and order creating posts for such purposes. The casual labourers if they had any grievances they could have brought it to the notice of the authority concerned but instead they chose to refuse to do work allotted to them and subsequently proceeded on strike. The Institute never denied work to the casual labourers. For the reasons stated above, the Institute is not liable to pay back wages or continuity of service as demanded by the petitioner—because such a situation was created by the casual labourers, on their own by refusing to do work and not by non-provision of work by Institute. Award may be passed dismissing the claim.

5. One witness was examined on the side of the petitioner and Exs. W-1 to W-12 have been marked. One witness was examined on the side of the respondent and Exs. M.1 to M.12 have been marked.

6. The point for consideration is : Whether the management of Sugarcane Breeding Institute, Coimbatore is justified in denying employment to 153 daily rated workmen with effect from 30-1-92 ? If not to what relief the workmen are entitled to ?"

7. The Point : The respondent Sugarcane Breeding Institute, Coimbatore was started in the year 1912 for certain objectives. The respondent instituted is engaged purely on agricultural activities pertaining to sugarcane crop and it is not for any profit motive as per its mandate. For the research work the respondent institute used to engage casual labours. 153 workmen concerned in the dispute were also engaged as casual labourers. It was the mentiontion of the management that for loading sugarcane to the lorry 5 men and 4 women will be provided and they used to finish the work within 4 hours. However, in the claim statement it has been stated that normally 8 male and 4 female workers were provided for leading of one lorry within a period of 4 hours. As there is no document, to show the norms fixed in order to load sugarcane in a lorry, we have to see the contentions raised by the parties. On 29-1-1992 when 5 men and 4 women were allotted it was the case of the respondent that they deliberately adopted a go slow process and failed to heed to the advice of the maistry. On that day they started work at 7.00 a.m. but did not complete the loading till 11.30 a.m. Prior to 29-1-1992 there were some problems between the management and the labourers. However, there there was no case of failure to do the work on the part of the workmen or denial of work on the part of the management. If the workers delayed the work, there must be some reason. When the management had taken a stand that on 29-1-1992, the workers adopting a go slow process and failed to finish the work of lading sugarcane in the lorry even after 4½ hours there must have been some reason. The management has not stated any reason which made the workers to adopt a go slow process on that particular day. In such circumstances the reasons assigned by the workers in the claim statement that normally the management used to provide 8 male workmen and 4 female workmen for loading the sugarcane into the lorry within the period of 4 hours and on that day when the management provided only 5 male and 4 female workers to load the sugar cane within 4 hours due to shortage of hands the workers could not do it within prescribed time. As there was no particular cause for go slow process as alleged to have been adopted by the workers, the reason stated by the workers that they could not finish the work within 4 hours for want of hands seems to be more probable. WW1 has given cogent evidence to that effect. By doing so, the management had increased the work load of the workmen. The management has also admitted in the counter statement that on 29-1-1992 in the afternoon session the directions given by the management to complete the loading of balance work and to harvest the 50 rows of sugarcane and to bundle and carry them to road was carried out.

8. The workmen loaded the lorry, cut the sugar canes but did not bundle and carry it to the road. The explanation offered by the workmen was that due to non-providing of sufficient number of workmen they could not finish the work as directed by the management on 29-1-1992. On 30-1-1992 Farm Superintendent instructed the labourers to complete the previous day's pending work of boundling and carrying the cut sugarcanes and to harvest 50 rows of sugarcane in the morning session and the loading work was allotted to the afternoon session. The labourers completed the work allotted on the forenoon session of 30-1-1992. When they were informed to go for loading sugarcanes in the afternoon that they were unable to do work and asked the Manager to provide them some work. From what is stated in the counter it is clear that cutting sugarcanes and other connected works have been done by the workmen as directed by the management. If at all the workman refuses to do work they could have refused to do the cutting work or if they were to adopt to go slow process they could not have cut 50 rows of sugarcane as directed by the management. However, it is pertinent to note that workmen had finished that part of work and they asked the Farm Superintendant not to allot the loading work but some other work. Therefore, it is clear that there was some problem in respect of the loading work alone. It is obvious in the circumtances of the case that because of not providing sufficient workmen to load sugarcane into the lorry the problem arose. It is clear that the shortage of hands provided management had caused the problem. As already stated that there was no work norms fixed. The management has contended that since the inception of the institute in the year 1912 they have been following the same procedure of allotting work to workmen and earlier they had no such problem. May be true that in the earlier years, they had provided sufficient number of men and women workers to load the sugarcane into lorry. When once sufficient workmen were not provided by the management, the workers were unable to do the work can be the only reasonable conclusion which can be arrived it in the circumstances of the case.

9. On 31-1-1992, the Farm Superintendent informerers to go for loading otherwise they would have to be marked absent for the afternoon of 30-1-1992. However, WW1 Loganathan contacted the other workers working in other places and they assembled near the farm office making loud noise and that had caused sudden disruption of operation in the research fields. This has been stated in the claim statement that when the request of the workmen to provide sufficient number of workmen for the loading operation was rejected by the Farm manager the same was represented to the Superintendent of Farm and also insisted that they should work as per the directions of the Farm Manager. When the Supreintendent threatened them to mark absent if they continue their behaviour, then the President of the union Shri Loganathan (WW1) had to interfere.

10. On 31-1-1992 when the morning muster call bell rang only some of the workers came inside farm premises and other shouting and threatening the other labourers and farm staff who came to work. Thereafter, the same stalemate continued indefinetely which has culminated into the reference. It was the main contention of the respondent that did not deny work and the workmen themselves stayed away from work and they were responsible for their non-employment. In other words, the workmen went on strike on their own violation, and the management was not responsible for the same. However, as already observed the failure to give sufficient workmen for the loading operation was the main reason for the problem and the workman cannot be blamed. When the work load was increased all of a sudden the workman had no other way except to ask the authorities to provide sufficient workman for loading operations and when the same was refused they had no other go except to come to the workspot and sit there without continuing the work. On 3-2-1992, thereafter the management thought fit to introduce a written undertaking from the workmen before allowing them for work. The workmen had resented to the direction of the management to sign the undertaking. It is the contention of the management that in bona fide manner to continue the work the management had no other go except to introduce such written undertaking to be signed by each and every workmen. However, it was contended on the side of the workman that the introduction of the written undertaking all of a sudden had not only taken away the rights which they had previously enjoyed but more work load was thrusted on them. They called it as unfair labour practice. The management had admitted that never before they fixed the work load for these workmen. They had also clearly stated that since 1912 they had no such problem that men as the workmen had been doing the work allotted to them by the management or that the management allotted a reasonable work which the workmen could do within the prescribed time. As stated earlier, it is only because of the management reducing the number of workmen in loading operation the problem had started. Thereafter, if the management wanted to introduce a new working pattern just to ensure the continuance of work and to keep up the reputation of the Institute, the management ought to have introduced the undertaking only after discussion with the labourers or with the representative of the Trade Unions, to which they are members. The management had not taken any such step. However, it unilaterally introduced Ex. W-1 written undertaking to be signed by each and every workmen and work was provided to those who have signed and refused to those who have not signed. Whatever may be the intention of the management in introducing the undertaking it must have been done through proper method of getting the concurrence of the union or the workers. If the workers felt that some part of the agreement was unreasonable they could have adopted the method of collective bargaining and could have solved the problem in the institute itself. Though the management has got a right to get work from the workers who were engagged by them, it should be through reasonable means. In this particular case we are not able support the stand taken by the management for the reason that the management had imposed a condition of signing the undertaking for providing work. As the undertaking was not taken on consensus or after collective bargaining that it was only an unilateral decision of the management and signing the agreement was a condition precedent to give work to the workers to those who had done their work without any such condition in the past would prove the unjustifiable demand of the management. It has to be held that the management had not adopted the proper procedure in introducing the new undertaking, to ensure between cooperation and work from the workman.

11. In Vaman Murthy Gharat & Ors. Vs. M.P. Apte & Ors. (1989 I LLJ P 134) the Bombay High Court held in a similar case :

> "I do not see how, when an employer asks an employee to give an undertaking of good conduct, it does not amount to a matter relating to an employment. It definitely relates to work."

In the instant case also, a mere reading of Ex. M. 11 would go to show that it is an undertaking of good conduct to be signed by the workman. The management has filed a set of annexure alongwith the written statement and at page No. 3 Annexure No. 7 the copy of the udertakig show that it is an undertaking for good conduct. In Swastik Textiles Engineers Private Limited Vs. Rajan Singh Santsingh & Ors. (1984 II LLJ P. 97), Bombay High Court held :

> "It no doubt contains assurance that the workman would not indulge in similar misconduct in future but that was not the only thing which he was required to State. In our opinion, the writing cannot be treated as a mere assurance good behaviour as sought to be urged on behalf of the petitioner."

In the instant case also the undertaking contains assurance of good behaviour on the part of the workmen and apart from that the management has also fixed the work norms unilaterally on the workmen. Such unilateral action on the part of the management cannot be supported. Schedule V I. 8 of the I.D. Act, 1947 reads :

> "To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a preceonditions to allowing them to resume work."

This is equally applicable to the instant case also and it can be said that as per Schedule V I. 8 the insistence on the part of the management to execute an undertaking for good conduct is unfair labour voluntarily abandoned the work. On the contrary it was the case of the workmen that by insisting on the undertaking the management refused work to them. The workers those who failed to sign could not enter

inside the respondent institute for their work. While considering the contention of the management that the workmen had voluntarily abandoned their work, it is worth while to refer decisios in G.T. Lad Vs. Chemicals and Fibres India (1979 I LLJ P 257) at page 260, Supreme Court held :

> "Abandonment of relinqueshment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined by in the light of the sorrounding circumstances of each case . . . .
>
> In the present case also the appepllant's absence from duty was because of their peaceful strike to enforce their demands. Accordingly, we are of the view that there was no abandonment of service on the part of the appellants."

When we apply the above decision of the Supreme Court to the instant case, it is clear that the workers had not abandoned their service. In fact they were very much after the employment and thereafter they had raised the dispute. The reasons already stated above would also go to prove that it is not the case of abandonment. Further, the facts of the case would also prove that the workers had not entered into any strike voluntarily. They were forced to stay outside the institute and those who had signed the undertaking alone were provided with work and not others. Those who have not signed the undertaking are these 153 workmen concerned in the dispute.

13. Another contention of the managemet is that they were casual employees. When we read the counter filed by the respondent, the system of engaging casual labourers has been maintained by the management since 1912. From the evidence available on record, and it can be said that these casual labourers had worked more than 240 days in a year and they had also worked continuously for number of years. Para 4(c) of the counter reveals that they had attendance register. The management has also filed Annexure IV and Annexure VI to show the attendance maintained by them for these workme. For many reasons, these workers might not have been taken to the category of temporary or permanent workmen, but treating them as casual labourers cannot take away the legitimate rights conferred on them by the law of the land. So, the contention of the respondent that they are casuals and they are not entitled for claim permanency cannot be accepted. In D. K. Yadav Vs. IMA Industries Ltd. (1993 II LLJ p. 696) Supreme Court held :

> "It is well settled that the right to life enshrined in Art. 21 of the Constituion would include the right to livelihood. The order of termination visit with civil consequence of jeopardising not only the worker's livelihood but also the career and livelihood of the dependants. Therefore, before taking any action of putting an end to the tenure of an employee, fairplay requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice."

This decision is squarely applicable to the instant case. If the workman had refused to work, the respondent management could have taken action against them as contemplated under law. The managemet cannot cotend that they were casual labourers and therefore no action need be taken against these workmen as per the provisions of the I.D. Act. As already stated, though these workmen are called as cannot contond that they were casual labourers and call them permanent workmen. Ex. W-12 shows that subsequently the management issued orders awarding permanent status to many workmen. In such circumstances, it cannot be said that these workmen as casuals had no sight and there was nothing wrong on the part of the management. For not following the procedure laid down under the I.D. Act, 1947 before refusing employment (or) terminating their services.

14. From the foregoing reasons, it is clear that the management of Sugar Cane Breeding Institute Coimbeatore is not justified in denying employment to 153 daily rated workmen w.e.f. 30-1-1992 and these workmen are entitled for reinstatement, continuity of service, back wages and all other attendant benefits.

15. In the result award is passed holding that the management of Sugar Cane Breeding Institute, Coimbatore is not justified in denying employment to 153 daily rated workmen w.e.f. 30-1-1992 ar dthese workmen are entitled for continuity of service, back wages and all other attendant benefits. No costs.

Dated this the 19th day of March 1997.

Sd/-

INDUSTRIAL TRIBUNAL

WITNESSES EXAMINED

For Petitioner union :

W.W. 1 : Thiru M. Loganathan

For Management :

M.W. 1 : Thiru S. Rajamohan.

DOCUMENTS MARKED

For Petitioner-Union :

Ex. W-1. : Xerox copy of form of undertaking required by the management.

Ex. W-2|3-2-92 : Telegrams sent to the Assistant Labour Commissioner by petitioner-union (Xerox copy).

Ex. W-3| : Memorandum submitted by petitioner-union to Hon'ble Minister for Agriculture, Govt. of India. (Xerox copy).

Ex. W-4|6-5-92 : Letter from petitioner-union to the Regional Labour Commissioner (Xerox copy).

Ex. W-5|30-5-92 : Memorandum filed by the management before the Regional Labour Commissioner (Xerox copy).

Ex. W-6|30-6-92 : Conciliation Proceedings (xerox copy).

Ex. W-7| : Conciliation failure report (xerox copy).

Ex. W-8|21-9-92 : Letter from petitioner-union to Government seeking reference (xerox copy).

Ex. W-9|23-11-92 : Letter from petitioner-union to Government seeking reference (xerox copy).

Ex. W-10|4-1-93 : Letter from petitioner-union to Government seeking reference (xerox copy).

W-11 : Statement showing work load iin exitence (xerox copy).

Ex. W-12|17-3-96 : Office order of the respondent (xerox copy).

For Management side :

Ex. M. 1|30-1-92 : Report of a Scientist of the respondent (Institute (xerox)

Ex. M-2|20-1-92 : ECC Daily record sheet of the respondent (xerox copy).

Ex. M- 3|27-1-92 : ECC Daily record sheet of the respondent (xerox copy).

Ex. M-4|1-5 91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-|2-5-91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-6|8-5 91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-7|20 5-91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-8/20-5-91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-9|20 5-91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-10|21-5 91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-11/31-5-91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-12|17-6 91 : Report of the Farm Superintendent|Managers (xerox copy).

Ex. M-13/19-8-91 : Report of the SC/ST Welfare Officer (xerox copy).

M-14|31-1-92 : Muster roll Main Farm (xerox copy).

Ex. M-15/31-1-92 : Muster Roll E.O.L. (Xerox copy).

Ex. M-16|Feb 1992 : Muster Roll main farm (xerox copy).

Ex. M-17/29-2-92 : Muster roll (Xerox copy).

Ex. M-18|22-1-92 : Daily record sheet (xerox (copy).

Ex. M-19|13-1-92 : Daily Record sheet for Sugarcane breeding (xerox copy).

Ex. M-20/ : Register of Sugarcane Breading Institute (xerox copy).

Ex. M-21| : Muster roll register Sugarcane Breeding Institute (xerox copy).

M.22/ Register (Muster roll) of Sugarcane Breeding Institute (Xerox copy).

I.T.

ANNEXURE A

Sl. No.	Name	Father/Husband	Joint Date	Ticket No.
1	2	3	4	5
1.	S. Maran	S/o. Subbab	20-2-76	
2.	N. Selvaraj	S/o. Nanjappan	25-7-78	
3.	P. Rasmaamy	S/o. Patti	25-7-78	
4.	P. Duraisamy	S/o. Palani	17-1-80	
5.	R. Arumchamy	S/o. Ramaswamy	17-1-80	
6.	P. Rangasamy	S/o. Patti	19-1-80	
7.	R. Muthusami	S/o. Ramaswamy	19-1-80	
8.	S. Gopalan	S/o. Srirangam	1-2-80	
9.	V. R. Natarajan	S/o. Ramaswamy	25-11-80	
10.	M. Dhannasi	S/o. Marudhan	25-11-80	
11.	N. Selvaraj	S/o. Nanjan	25-11-80	
12.	M. Raman	S/o. Marudhan	25-11-80	
13.	M. Vedan	S/o. Mandri	25-11-80	
14.	M. Masani	S/o. Maran	25-11-80	
15.	A. Thangavelu	S/o. Arumugam	25-11-80	
16.	T. Krishnan	S/o. Ponnan	25-11-80	

Sl. No.	Name	Father/Husband	Date of Joining	Token No.
1	2	3	4	5
17.	P. Chinnaswami	S/o. Palani	17-12-80	
18.	V. Rajendran	S/o. Venkatachalam	10-2-82	
19.	T. Karuppuswamy	S/o. Thannesi	10-2-82	
20.	R. Kuppuswamy	S/o. Rangan	10-2-82	
21.	S. Ramaswami	S/o. Sangannan	10-2-82	
22.	M. Murugesan	S/o. Madan	11-2-82	
23.	M. Loganathan	S/o. Marudhachalam	11-2-82	
24.	M. Ramswami	S/o. Marudhan	12-2-82	
25.	K. Kannian	S/o. Kumaran	12-2-82	
26.	N. Subramanian	S/o. Nachimuthu	12-2-82	
27.	M. Chandran	S/o. Mariappan	12-2-82	
28.	N. K. Nagaraj	S/o. Karuppanan	18-2-83	
29.	S. Nanjukutty	S/o. Sadayappan	18-2-83	
30.	T. Rajendran	S/o. Dharuman	18-2-83	
31.	C. Kaliappan	S/o. Chinan	21-2-83	
32.	S. Periasamy	S/o. Subban	21-2-83	
33.	T. Duraiswami	S/o. Thanickachalam	21-2-83	
34.	S. Balan	S/o. Vedan	21-2-83	
35.	N. Kuppuswami	S/o. Nanjappa G. R.	1-2-84	
36.	R. Mani	S/o. Ranganathan	1-2-84	
37.	A. Karuppuswamy	S/o. Ayyavu	1-2-84	
38.	V. R. Nagarajan	S/o. Raman	1-2-84	
39.	R. Sunderrajan	S/o. Ramasami	1-2-84	
40.	K. Krishnamurthy	S/o. Karuppuswamy	1-2-84	
41.	K. Gopal	S/o. Karuppanan	1-2-84	
42.	M. Karuppusami	S/o. Maripaan	5-1-85	
43.	Arumugam	S/o. Karupannan	5-1-85	
44.	P. Chinnasami	S/o. Palani	1-2-85	
45.	P. Thangavelu	S/o. Perumal	1-2-85	
46.	R. Nagarajan	S/o. Raman	1-2-85	
47.	R. Rangaraj	S/o. Ramasami	1-2-85	
48.	A. Muthusami	S/o. Arumugam	1-2-85	
49.	K. Rangasami	S/o. Kandan	18-12-86	
50.	N. Palanichamy	S/o. Nanjappa G. R.	25-1-88	
51.	R. Palanichamy	S/o. Ramasami	2-11-88	
52.	N. Dhandapani	S/o. Nanjappa G. R.	16-12-88	
53.	N. Murugesan	S/o. Nanjappan	16-12-88	
54.	M. Matarajan	S/o. Marudhappan	16-12-88	
55.	G. Suresh	S/o. Gopal	19-12-88	
56.	G. Nagarajan	S/o. Chinnan	19-12-88	
57.	M. Selvam	S/o. Marudhachalam	19-12-88	
58.	R. Selvaraj	S/o. Raju	1-2-85	
59.	S. Sampath	S/o. Srirangam	19-12-88	
60.	M. Subramanian	S/o. Mylsamy	1-2-84	

Sl. No.	Name	Father/Husband	Date of Joining	Token No.
1	2	3	4	5
1.	G. Maruthathal	W/o. Ganapathy	1970	
2.	R. Rukmani	W/o. Rangaswamy	1970	
3.	B. Janaki	W/o. Birimagiri G. R.	1970	
4.	P. Ponnachinni	W/o. Ponnan	1970	

1	2	3	4	5
5.	N. Valliammal	W/o. Nanjappan	1970	
6.	K. Rangammal	W/o. Kaliannan G.R.	1970	
7.	V. Nachakkal	W/o. Veerappa G. R.	1970	
8.	R. Kaliammal	W/o. Ramasami	1970	
9.	R. Ponnakkal	W/o. Ramasami	1970	
10.	D. Subbammal	W/o. Dasu Naidu	5-4-70	
11.	T. Thulasiammal	W/o. Ayyasamy	22-2-71	
12.	T. Suseela	W/o. Munusamy	19-4-71	
13.	A. Mailatha	W/o. Anagamuthu	24-4-71	
14.	S. Shinnamini	W/o. Sengodan	13-9-71	
15.	K. Kakshmi	W/o. Karuppanan	1-11-71	
16.	P. Kannammal	W/o. Palanisamy	13-3-72	
17.	S. akshmi	W/o. Sadayappan	13-3-72	
18.	K. Sathiavani	W/o. Krishnan	20-3-72	
19.	M. Mailathal	W/o. Muthusamy	20-3-72	
20.	M. Chinnammal	W/o. Maripappan	20-3-72	
21.	R. Thulasi	W/o. Rangan	3-4-72	
22.	Vedapatty Sarasu	W/o. Natarajan	1-11-76	
23.	R. Singari	W/o. Ranga G. R.	1-11-76	
24.	S. Pappathi	W/o. Subramanian	1-11-76	
25.	Veerabhadramani	W/o. Veerabhadraraju	1-11-76	
26.	Sinnapparasu	W/o. Chinnappan	7-3-77	
27.	Ammasaiammal	W/o. Ajjana Gr.	1-8-77	
28.	K. Rukmani	W/o. Kumaran	16-5-78	
29.	D. Vinodhini	W/o. Dasanna Gr.	17-1-80	
30.	N. Subbathal	W/o. M. Murugesan	17-1-80	
31.	R. Subbathal	W/o. Ramasami	17-1-80	
32.	K. Kannammal	W/o. Kandhal	19-1-80	
33.	O. K. Sarasu	W/o. Rangasami	19-1-80	
34.	N. Lakshmi	W/o. Sarguhanathan	19-1-80	
35.	K. Parvatham	D/o. Kanniapa Gr.	30-1-80	
36.	Rayappa Sarasu	W/o. Rayappan	30-1-80	
37.	Kamala	W/o. Sakthivel	1-3-80	
38.	K. Sarojini	W/o. Sujidasan	5-3-80	
39.	C. Lakshmi	W/o. Tirupathi	25-11-80	
40.	D. K. Lahshmi	W/o. Nanjappan	25-11-80	
41.	P. Janaki	W/o. Palanichamy	25-11-80	
42.	L. Mallammal	W/o. Lahskmanan	25-11-80	
43.	A. Marathal	W/o. Ayyavu	25-11-80	
44.	K. Nagammal	W/o. Krishnasami	25-11-80	
45	V. Indrani	W/o. Chidambaram	25-11-80	
46.	C. Subbulakshmi	W/o. Chinnasami	25-11-80	
47.	R. Rajajani	W/o. Rayappan	25-11-80	
48.	V. Santha	W/o. Veeran	25-11-80	

1	2	3	4	5
49.	K. Marudhai	W/o. Rangan	25-11-80	
50.	R. Rangammal	W/o. Angan	25-11-80	
51.	N. Menaal	W/o. Nachimuthu	25-11-80	
52.	R. Revathy	D/o. Rajan	25-11-80	
53.	M. Nachammal	W/o. Masani	25-11-80	
54.	O. K. Sundarammal	W/o. Ponnusamy	25-11-80	
55.	P. Ammaniammal	W/o. Ponnusamy	25-11-80	
56.	T. Rajammal	D/o. Chinnan	25-11-80	
57.	C. Kuttiammal	D/o. Chinnan	25-11-80	
58.	R. Palaniammal	W/o. Rajan	25-11-80	
59.	P. Kannammal	W/o. Ponniah Gr.	25-11-80	
60.	P. Sinnakannu	W/o. Palanisamy	25-11-80	
61.	N. Rangammal	W/o. Nachimuthu	25-11-80	
62.	M. Subbammal	W/o. Vedan	25-11-80	
63.	N. Saraswathy	W/o. Nachimuthu	10-02-82	
64.	M. Shanthamani	W/o. Mayilsamy	10-02-82	
65.	R. Saroja	W/o. R. Rangaraj	10-11-82	
66.	R. Ramathal	W/o. Nachimuthu	10-02-82	
67.	K. Thangamani	W/o. Kumarasamy	10-11-82	
68.	K. Pappathy	W/o. Palanisamy	10-11-82	
69.	R. Mariammal	W/o. Rangasamy	10-02-82	
70.	C. Sundaral	W/o. R. Nagaraj	10-02-82	
71.	T. Lakshmi	D/o. Thirumani	10-02-82	
72.	T. Pappathy	W/o. Thannasi	10-02-82	
73.	A. Lakshmi	W/o. Arumugam	10-02-82	
74.	R. Eswari	W/o. Maruppa Gr.	10-11-82	
75.	N. Sandara	W/o. Natarajan	10-11-82	
76.	K. Thulasiammal	W/o. Kalikutti	10-11-82	
77.	S. Ammini	W/o. Sadhasivam	10-11-82	
78.	T. Krishnammal	W/o. Thangavelu	10-11-82	
79.	A. Deivaneni	W/o. Arumugam	10-11-82	
80.	R. Andal	W/o. Radhakrishnan	10-11-82	
81.	R. Pakkathal	W/o. Rangan	16-02-82	
82.	N. Mayilathal	D/o. Nachimuthu	16-02-82	
83.	T. Chinnamini	W/o. Thulasidas	16-02-82	
84.	R Lakshmi	W/o. Rangasamy	16-02-82	
85.	R Palaniammal	W/o. Rayappan	16-11-82	
86.	E Nagamani	D/o. Murugesan	16-11-82	
87.	M Malliga	D/o. Manickam	16-11-82	
88.	R Rajeswari	D/o. Raman Chettiar	21-02-83	
89.	S Alaguthai	W/o. Chellamuthu	01-04-85	
90.	M Eswari	W/o. Manian	01-04-85	
91.	C Maragatham	W/o. Kumarasamy	04-02-92	
92.	L. Achiyammal	W/o. Lakshmanan	04-02-91	
93.	R. S. Lakshmi	W/o. Subbiyah	04-02-92	

नई दिल्ली, 6 अगस्त, 1997

का०आ० 2132.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इंस्टिट्यूट ऑफ स्पाईसेस रिसर्च, कोजिकोड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण कोजिकोड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-1997 को प्राप्त हुआ था।

[सं० एल०-42012/28/96-आई०आर० (डी०यू०)]

के०वि० बी० उन्नी, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kozhikode as shown in the annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Spices Research, Kozhikode ad their workman, which was received by the Central Government on the 6-8-97.

[No. L-42012/28/96-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Monday, the 30th day of June, 1997

PRESENT :

Shri P. O. Barkath Ali, B.Sc., LL.B., Presiding Officer.

I.D.(C) 6/97

BETWEEN :

1. The Director, Indian Institute of Spices Research, Chelavoor, Calicut-673 012.
2. The Farm Superintendent, Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode-673 528. . Managements

And

Smt. Chandrika M. K., Karuvarakkunnumel House, Chembanoda P.O., Pannikkottur Harijan Colony, Peruvannamuzhy (Via) 673 528. .. Worker

REPRESENTATIONS :

Sri P. M. Padmanabhan, Advocate, Calicut .. For Management.

AWARD

This is an industrial dispute between the management of M/s. Indian Institute of Spices Research, Calicut and its worker Smt. Chandrika M. K. referred to this court for adjudication by G.O. No. L-42012/28/96-IR(DU) of Government of India, Ministry of Labour dated 25th February, 1997.

2. The issue referred for adjudication in "whether the action of the management of Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode in terminating the services of Smt. Chandrika M. K. is legal and justified ? If not, to what relief the workman is entitled to ?

3. In pursuance to othe notices issued the management entered appearance. The worker remained absent and was set ex parte. It follows the worker has abandoned his claim. Therefore an award has to be passed rejecting the claim of the workman.

4. In the result, an award is passed rejecting the claim of the workman.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 30th day of June, 1997.

P. O. BARKATH ALI, Presiding Officer,

नई दिल्ली, 6 अगस्त, 1997

का०आ० 2133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इंस्टिट्यूट ऑफ स्पाईसेस रिसर्च, कोजिकोड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोजिकोड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-1997 को प्राप्त हुआ था।

[सं० एल०-42012/30/96-आई०आर० (डी०यू०)]

के० वी० बी० उन्नी, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kozhikode as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Spices Research, Kozhikode and their workman, which was received by the Central Government on the 6-8-1997.

[L-42012/30/96-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Monday, the 30th day of June, 1997

PRESENT :

Shri P. O. Barkath Ali, B.Sc., LL.B., Presiding Officer.

I.D.(C) 8/97

BETWEEN

1. The Director, Indian Institute of Spices Research, Chelavoor, Calicut-673 012.

2. The Farm Superintendent, Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode-673 528. .. Managements

AND

Shri Satyan N.P. Naduparambil House, Koothali P.O., Perambra (Via), Calicut District. .. Workman

REPRESENTATIONS :

Sri P. M. Padmanabhan, Advocate, Calicut. .. For Managements.

AWARD

This is an industrial dispute between the management of M/s. Indian Institute of Spices Research, Calicut and its worker Sri Satyan N. P. referred to this court for adjudication by G.O. No. L-42012/30/96-IR(DU) of Government of India, Ministry of Labour dated 25th February, 1997.

2. The issue referred for adjudication is "whether the action of the management of Indian Institute of Spices Research Puruvannamuzhy, Kozhikode in terminating the services of Sri Satyan N.P. is legal and justified ? If not, to what relief the workman is entitled to ?

3. In pursuance to the notices issued the management entered appearance. The worker remained absent and was set ex parte. It follows the worker has abandoned his claim. Therefore, an award has to be passed rejecting the claim of the workman.

4. In the result, an award is passed rejecting the claim of the workman.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 30th day of June, 1997.

P. Q. BARKATH ALI, Presiding Officer.

नई दिल्ली, 6 अगस्त, 1997

का०आ० 2134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इन्स्टिट्यूट ऑफ स्पाईसेस रिसर्च, कोजिकोड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोजिकोड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[सं० एल०-42012/36/96-आई०आर० (डी०यू)]

के० वी० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 6th August, 1997

S.O. 2134.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kozhikode as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Spices Research, Kozhikode and their workman, which was received by the Central Government on the 6-8-1997.

[L-42012/36/96-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Monday, the 30th day of June, 1997

PRESENT :

Shri P. Q. Barkath Ali, B.Sc., LL.B., Presiding Officer.

I.D.(C) 14/97

BETWEEN

1. The Director, Indian Institute of Spices Research, Chelavoor, Calicut-673 012.

2. The Farm Superintendent, Indian Institute of Spices Research, Puruvannamuzhy, Kozhikode-673 528. .. Managements

And

Shri Karunan Nambiar N.P., Naduparambil Kuthali P.O., Perambra (Via), Calicut Dist. .. Workman

REPRESENTATIONS :

Sri P. M. Padmanabhan, Advocate, Calicut. For Managements.

AWARD

This is an industrial dispute between the management of M/s. Indian Institute of Spices Research, Calicut and its worker Karunan Nambiar N.P. referred to this court for adjudication by G.O. No. L-42012/3696-IR(DU) of Government of India, Ministry of Labour dated 25th February, 1997.

2. The issue referred for adjudication is "whether the action of the management of Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode in terminating the services of Karunan Nambiar N.P. is legal and justified ? If not, to what relief the workman is entitled to?

3. In pursuance to the notices issued the management entered appearance. The worker remained absent and was set ex parte. It follows the worker has abandoned his claim. Therefore an award has to be passed rejecting the claim of the workman.

4. In the result, an award is passed rejecting the claim of the workman.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 30th day of June, 1997.

P. Q. BARKATH ALI, Presiding Officer

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इंसटिट्यूट ऑफ स्पाईसेस रिसर्च, कोजिकोड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, कोजिकोड में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोजिकोड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-97 को प्राप्त हुआ था।

[सं० एल०-42012/38/96-आई०आर० (डी०यू०)]
के०वि० बी० उन्नी उण्णी, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kozhikode as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Spices Research, Kozhikode and their workman, which was received by the Central Government on 8-8-1997.

[L-42012/38/96-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Monday, the 30th day of June, 1997

PRESENT :

Shri P. Q. Barkath Ali, B.Sc., LL.B., Presiding Officer.

I.D.(C) 16/97

BETWEEN

1. The Director, Indian Institute of Spices Research, Chelavoor, Calicut-673 012.

2. The Farm Superintendent, Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode-673 528. .. Managements

AND

Shri A. P. Padmanabhan, Ambalapparambil House, Kadiyangadu P.O., Perambra Via., Calicut Dist. .. Workman

REPRESENTATIONS :

Sri P. M. Padmanabhan, Advocate, Calicut. .. For Managements

AWARD

This is an industrial dispute between the management of M/s. Indian Institute of Spices Resaarch, Calicut and its worker A. P. Padmanabhan referred to this court for adjudication by G.O. No. L-42012/38/96-IR(DU) of Government of India, Ministry of Labour dated 25th February, 1997.

2. The issue referred for adjudication is "whether the action of the management of Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode in terminating the services of A. P. Padmanabhan is legal and justified ? If not, to what relief the workman is entitled to ?

3. In pursuance to the notices issued the management entered appearance. The worker remained absent and was set ex parte. It follows the worker has abandoned his claim Therefore an award has to be passed rejecting the claim of the workman.

4. In the result, an award is passed rejecting the claim of the workman.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 30th day of June, 1997.

P. Q. BARKATH ALI, Presiding Officer,

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इंसटिट्यूट ऑफ स्पाईसेस रिसर्च, कोजिकोड के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोजिकोड के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-97 को प्राप्त हुआ था।

[सं० एल०-42012/39/96-आई०आर० (डी०यू०)]
के०वि० बी० उण्णी, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2136.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kozhikode as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Indian Institute of Spices Research, Kozhikode and their workman, which was received by the Central Government on the 8-8-1997.

[L-42012/39/96-IR(DU)]
K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE LABOUR COURT, KOZHIKODE, KERALA STATE

Monday, the 30th day of June, 1997

PRESENT :

Shri P. Q. Barkath Ali, B.Sc., LL.B., Presiding Officer.

I.D.(C)17/97

BETWEEN :

1. The Director, Indian Institute of Spices Research, Chelavoor, Calicut-673 012.
2. The Farm Superintendent, Indian Institute of Spices Research, Peruvannamuzhy, Kozhikode-673 528. .. Managements

And

Shri C. K. Babu, Cherusseriyil House, Peruvannamuzhi P.O. Calicut-673 528. .. .. Workman

REPRESENTATIONS :

Sri P. M. Padmanabhan, Advocate, Calicut. .. For managements.

AWARD

This an industrial dispute between the management of M/s. Indian Institute of Spices Research, Calicut and its worker Sri C. K. Babu referred to this court for adjudication by G.O. No. L-42012/39/96-IR (DU) of Government of India, Ministry of Labour dated 25th February, 1997.

2. The issue referred for adjudication is "whether the action of the management of Indian institute of Spices Research, Peruvannamuzhy, Kozhikode in terminating the services of Shri C. K. Babu is legel and justified ? If not, to what relief the workman is entitled to ?

3. In pursuance to the notices issued the management entered appearance. The worker remained absent and was set exparte. It follows the worker has abandoned his claim. Therefore, an award has to be passed rejecting the claim of the workman.

4. In the result, an award is passed rejecting the claim of the workman.

Dictated to the Confidential Assistant, transcribed by him, revised, corrected and passed by me on the 30th day of June, 1997.

P. Q. BARKATH ALI, Presiding Officer,

नई दिल्ली, 1 अगस्त, 1997

का.आ. 2137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. एयर इंडिया के प्रबंधतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-97 को प्राप्त हुआ था।

[एल-11011/4/91-आई आर(विविध)/आई आर(सी-I)]
ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 1st August, 1997

S.O. 2137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India and their workmen, which was received by the Central Government on 31-7-97.

[No. L-11011/4/97-IR(Misc.)/IR (C-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

PRESENT :

Shri Justice R. S. Verma, Presiding Officer.

Reference No. CGIT-83 of 1991

PARTIES :

Employers in relation to the management of Air-India.

AND

Their Workmen.

APPEARANCES :

For the Management : Shri E. P. Bharucha, Advocate, Shri Z Kamdin, Advocate, Shri Abhay Kulkarni, Advocate.

For the Workmen : Ms. K. Samant, Advocate.

STATE : Maharashtra.

Mumbai, the 10th day of July, 1997

AWARD

1. Air-India is a Corporation incorporated under the Air Corporations Act. 1953 and inter-alia runs Air Passenger transport services. Its cabin crew inter-alia consists of male cabin attendants known as Flight Pursers and female cabin attendants known as Air Hostesses. Air Hostesses are required to report to duty one and a half hour prior to the departure of the flight. After she reports in duty, she is

required to undergo customs and immigration formalities. She has to perform some paper work also before flight takes off. After discharging these duties an Air hostess has to board the Air Craft. In the Air-Craft she has to check toilets, cabin and emergency equipments. She has to escort passengers to their seats. She serves on board Juices and Snacks to the passengers. She is also required to effect liquor service and provide meals to the passengers. The meals are taken in trolleys. They are also required to help old and infant passengers. After the meals have been carried to the passengers and the passengers have taken their meals, cleaning is required to be done. She is required to perform some other sundry duties as well on the Air-Craft.

2. It appears that when a air-hostess becomes pregnant she is to undergo a medical check for confirmation of pregnancy. Upon confirmation of pregnancy the air-hostess is taken off duties from the Air Craft and is not permitted to discharge her functions on the Air Craft. She is also not provided any alternative employment during the period she remains pregnant. She is eligible for grant of specified maternity leave but the total period for which an Air Hostess is disabled from discharging duties due to pregnancy and delivery is quite extensive and after adjustment of maternity leave her absence from duty is adjusted against her normal sick and privilege leave admissible to her. The Air-India Hostesses Association was not satisfied with this situation and raised a demand challenging the aforesaid dispensation and claimed that the Air Hostesses who get pregant and have to remain on leave on this account should be allowed to work on ground, till such time they are capable of performing the duties and should not be liable to be put off from duty compulsorily. Conciliation proceedings took place, but failed. After conciliation failed, the appropriate government referred the following dispute to this tribunal for adjudication :

> "Whether the action of the management of Air-India in adjusting the Sick and Privilege Leave of Air Hostesses against the Pregnancy Leave without providing any alternative employment on the ground and thus depriving Air Hostesses of the salary during the leave due pregnancy period is legal and justified ? If not, to what relief the Air Hostesses are entitled to ?"

The Associaion filed its statement of claim on 06-12-91, wherein it was stated that Air Hostesses serving under Air India were about 1000 in number. It was inter-alia pleaded that female workmen in the said cadre are deprived of work and wages by the Corporation on being pregnant for a period ranging from 14 to 16 months from the day one their pregnancy is confirmed. Prior to confirmation of pregnancy the Air Hostesses are subject to several medical tests and are considered as if they are on sick leave. Upon confirmation of pregnancy this period is treated as part of unpaid maternity leave.

4. It was pleaded that pregnancy was not a disease or disability yet the management was forcing Air Hostesses to remain away from their work for 14 to 16 months from the day one of confirmation of pregnancy eventhough it has not been not declared to be unsafe for them to fly and perform their duties abroad. It was pointed out that during the period of 14 months the Air Hostesses is paid salary for 3 months and is required to report for duty on completion of 45 days of maternity leave, while after the delivery the balance of the period is treated as leave without pay, or if sick leave or privilege leave is available to her credit, the same adjusted towards the same. It is pleaded that the Corporation is thus forcing absence from duty on the air hostesses who become pregnant ; no alternative employment is offered to them nor any salary is paid to them in lieu of this forced absence. It was pleaded that even when the air hostesses had expressed their willingness to work they were denied work.

5. It was pleaded that Air India has a scheme known as 'Annuity Scheme' for flying crew. Under this scheme, a flying crew when declared medically unfit for flying duties, is paid a percentage of the salary per month, until he resumes flying duties on being found fit. The Air India has not extended this Scheme to the Air Hostesses who are required to stay at home on detection of pregnancy.

6. It was also pleaded that the other female employees of the Corporation were allowed to work till the last day of their pregnancy i.e. till delivery and are paid full salary and allowances during this period and are not forced to stay away from work during the entire period of their pregnancy.

7. It was further pleaded that the Dy. Chief, Additional Chief and Chief Air Hostesses who are promotees from amongst the Air Hostesses are engaged for ground duties in the office of the Cabin Crew Movement Control, the Cabin Crew Training Centre and other administrative functions. However, during pregnancy the Dy. Chiefs are forced to remain at home on forced leave not permitting them to continue their duties.

8. It has been pleaded that this action of the management was an act contrary to the principles of natural justice and was sex-biased, unfair and illegal.

9. It was inter-alia pleaded that :

> "It is the demand of the workmen that Air India Corporation should be directed to amend its circular forcing the Air Hostesses to remain away from work immediately on confirmation of pregnancy and allow them to continue working unless medical opinion confirms that it shall not be safe for her to perform the functions because of the advancement of pregnancy. In the event of the medical opinion being against her performance of flight duties, she must be given the option of alternate employment in the same grade or such other jobs as she had been performing, while assigned to office duties. In case the Corporation fails to provide such employment, it should be directed to pay to her full salary and allowances for the period she is forced to remain away from work".

10. The Association bases its demand on the following grounds stated in para 10 of the claim petition.

> "(a) Pregnancy is not a sickness|disability.
>
> (b) There is no medical opinion to state that it is unsafe for an Air Hostess to fly and perform her functions for the initial period of pregnancy till the pregnancy is advanced to cause any concern ;
>
> (c) The action of Air India is unjust, unfair and contrary to the principles of natural justice and law ;
>
> (d) Air Hostesses who have no other source of income are put to in human hardships during pregnancy period due to her forced unemployment and non-payment of salary ;
>
> (e) The action of the management if Air-India is discriminatory and sex-biased.
>
> (f) There is no bar for a pregnant woman to fly as a passenger ;
>
> (g) There is no provision in the Air Craft rules to ground an Air Hostess upon confirmation of pregnancy ;
>
> (h) There is no violation of air safety involved in allowing the Air Hostess to undertake flight duties when she is pregnant as there is no bar in the Air Craft Act & Rules.
>
> (i) The existing rules nowhere lay down that Women Pilots are unfit to operate flights on confirmation of pregnancy.

Upon such premises the Association made the following prayers :

> (a) The administrative isstructions|guidelines issued by Air India grounding the Air Hostess upon confirmation of pregnancy and debiting the period in their leave account and|or treating them on leave with loss of pay be declared as Null and Void ;
>
> (b) To treat the grounded period upon confirmation of pregnancy as a period of on duty and pay the basic pay and allowances to the concerned workman every month ;
>
> (c) The procedure followed by Air India in making the payment for maternity period of 90 days only

after resuming on duty be scrapped and payment of wages for the period of Maternity Leave of 90 days be made on monthly basis; after the child birth, the cost of this reference valued at Rs. 2500/- be awarded.

This statement of claim was signed by Miss Asha Mulgaokar, General Secretary, Air India Hostesses' Association.

11. The Air India has opposed the claim by filing a detailed written statement on diverse ground. It has been submitted that the reference by the Central Govt. was bad and void as the Air India Hostesses Association had no locus standi to raise dispute in question since the said Union is not a recognised Union.

It was also submitted that there is an Air India Cabin Crew Association, which is a recognised Union. Air Hostesses are represented by the said recognised Union and the said Union had been entering into various settlemets/memos of understandings in respect of pay scales, terms and conditions of service with the management. The said Air India Cabin Crew Association represented majority of the Air Hostesses and on this ground too Air India Hostesses' Association had no locus standi to raise dispute in as much as it did not posses a representative character.

12. It was further pleaded that Air India Hostesses Association was a composite Association of Air Hostesses and Deputy Chief Air Hostesses. The Dy. Chief Air Hostesses belong to Managerial and Administrative cadre and do not come within the purview of the definition of "workmen" contained in section 2(S) of the Industrial Disputes Act and hence on this ground also the reference was bad and incompetent. Reliance in this connection was placed upon a record note dt 16th November, 1983 and certain precedents.

13. It was also pleaded that the Air Hostesses were aware and knew at the time of their employment that during pregnancy they were not permitted to undertake flight duties and hence the Air India Hostesses Association was debarred from raising this dispute.

14. It was further pleaded that Air India Cabin Crew Association had entered into a memorandum with the Air India Management dt. 29th March 1985 before the Dy. Chief Labour Commissioner (Central) and Conciliation Officer, New Delhi under Section 12 of the Industrial Dispute Act. Likewise a settlement dt. 10-5-1990 covering for the wage period 1-10-85 to 31-8-90 was made which inter-alia provided that all the existing benefits/applications and practise. Awards and settlement and agreements shall continue unaffected. It was pleaded that the said settlement was subsisting and continuing and therefore during the subsistence of the said settlement the Air India Hostesses' Association could not raise this dispute.

15. It was submitted that already a reference being NTB-1 of 1990 was pending with the National Industrial Tribunal, Mumbai which covered the subject matter of this dispute and therefore also this reference was bad.

16. On merits it was submitted that the non-deployment of Air Hostesses on flight duties, who were pregnant, was the prerogative of the management, it being a managerial function, and therefore the dispute could not be referred to this tribunal.

17. It was submitted that the nature of duties of Air Hostesses is such that during pregnancy they are unable to perform their duties; they may develop complications in case they are allowed flight duties and hence the management formulated policy of not allowing the Air Hostesses to do flying duties during pregnancy.

18. It was pleaded that though Air Hostesses and Flight Pursers were members of the Cabin Crew Association, they were entirely separate classes of workmen governed by different sets of rules and regulations and conditions of service and treatment given to Air Hostesses on account of pregnancy could not amount to discrimination so as to violate Article 14 of the Constitution of India.

19. It was reiterated that Dy. Chief Air Hostesses, Additional Chief Air Hostesses and Chief Air Houstesses are in supervisory grade, their salaries are more than Rs. 1,600 p.m. and as such they are excluded from the purview of the definition of 'workman' as defined under the provisions of the Industrial Disputes Act, Therefore, the provision of the Industrial Dispute Act were not applicable to them and the present statement of claim was liable to be dismissed as ground as well.

It was denied that the management was acting unjustly, or unfairly or contrary to the principles of natural justice and law or its action was discriminatory and sex biased in not permitting the Air Hostesses to have flight duties during pregnancy. Certain other pleas were also raised which are not very material and upon such pleadings it was submitted that the claim be dismissed.

20. Both the sides have led documentary evidence in support of their respective cases. In oral evidence Miss Asha Mulgaokar has appeared to support the case of the Association. She was subjected to lengthy cross examination by learned counsel for the management. The Management has filed affidavit of Dr. L. P. Nakhwa in support of its pleadings. Dr. Nakhwa was cross examined on behalf of the Association at length.

21. After both parties had closed their evidence I heard the learned counsel for the parties at length.

22. Following points arise for adjudication in this case.

1. Whether Air India Hostesses Association is not competent to raise and espouse the dispute ?
2. Whether the dispute referred to this Tribunal was not an industrial dispute in the particular circumstance of the case ?
3. Whether the management was not justified in putting off the Air Hostesses from flight duties on detections/confirmation of their pregnancy ?
4. If point No. 3 is decided against the Union, whether the management ought to put pregnant Air Hostesses on ground duties, during the pregnancy ?
5. If Issue No. 4 is decided against the Union, can the Union claim grant of leave on full wages for the entire period of pregnancy plus maternity leave, leave, without adjustment of this period against her leave for other types, due and admissible.
6. Relief ?

23. Now first of all I may take up the contentions of the Management with regard to competence of Air India Hostesses Association to raise and espouse the present dispute. The contention has been canvassed from diverse angles and I would deal with the relevant contentions one by one.

24. The first contention is that the Air India Hostesses Association is not a recognised Union. This contention deserves to be stated only for the sake of rejection. Industrial Disputes Act 1947 does not envisage raising and espousal of an industrial dispute by a recognised Union alone. The concept of 'recognised Union' is foreign to the scheme of the Industrial Dispute Act. 1947 or to the provisions of the Trade Unions Act. 1926.

25. Now, I may deal with the contention that the Association being a composite Union of Air Hostesses (Workmen) and Deputy Chief Air Hostesses (Supervisory Officers) cannot espouse the cause. The Expression "Trade Union" has been defined in Section 2(qq) of the Industrial Disputes Act to mean a "Trade Union" registered under the Trade Unions Act 1926. Section 2(h) of the Trade Union Act, 1926 defines the Trade Union "To mean in combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers or for imposing restrictive conditions on the contact in Trade or business, and includes any federation of two or more Trade Union. The main provision is followed by a proviso which is not relevant or germane to the present discussion. By this definition, a 'trade union' is a combination, whether temporary or

permanent, found primarily for the purpose of regulating relations between workmen and employers or between workmen and workmen or between employers and employers etc., etc. .... This definition does not prescribe or lay down as to who shall be members of the combination constituting the 'trade union' though the section specifies the object or the purpose for which the trade union has been fromed. Clause (e) of Section 6 of the Trade Union Act 1926 given an indication as to who would be members of a Trade Union registerable under the provision of this Act. Section 6(E) of the Trade Union Act, 1926, Shorn of other clauses, not germane to this discussion reads as follows :

"Section 6—Provisions to be contained in the rules of a Trade Union—A Trade Union shall not be entitled to registration under this act unless the executive thereof is constituted in accordance with the provisions of this Act, and the rules thereof provided for the following matters namely (e) The admission of ordinary members who shall be persons actually engaged or employed in a Industry with which Trade Union is connectiod and also admission of the number of honorary or temporary members as "Office Bearers" required in the Section 22 to form the executive of the Trade Union" (ee) (g)(h)(i)(j) (Emphasis mine). This provision would go to show that the admission of ordinary members to Trade Union is not confined to workmen alone but "persons actually engaged or employed in the industry" are also eligible to be admitted as members who are also qualified to become office bearers of the Trade Union. The expression 'Persons actually engaged or employed in the industry' is wider enough to include 'non workmen' also provided they are engaged or employed in the industry. Thus the contentions that the Trade Union to be eligible to espouse an industrial dispute, the Union ought not to be a composite Union, has no merit."

26. Learned Counsel for the Management streneously relied upon 1990 Labour Industrial Cases 606 Sri Visakha Grammeena Bank Employees Association, Srikakulam, V/s. Government of India, Ministry of Finance, New Delhi and another. In that case, the membership of the petitioner Association was a composite one consisting of Officers and workers. The respondent by a letter dated 25-11-88 and circular dated 21-2-89 directed the Regional Banks not to give recognition to Associations having composite membership of Officers and workers. The petitioner Association challenged the aforesaid letter and circular contending that they were unconstitutional. It was contended before Honourable the Single Judge of the Andhra Pradesh High Court that the 'Trade Unions' Act does not restrict members of the Trade Union of workers alone and the Act does not require Trade Union to be restricted to 'workmen' as defined in Section 2(S) of the Industrial Dispute Act". The Learned Single Judge after dealing with the history of recognition of Trade Union and Industry and also with the history of the code of discipline of Industry, and referring to judgment of the Apex Court rendered in Rural Workers Union, Bombay 1985 Lab IC 242 held that denial of recognition to a composite Union was not violative of Act 19(1)(c) of the Constitution of India. In the present case, the management has not pleaded that it had put any embargo upon formaion of a composite Association and hence a composite Association could not be formed and recognised. Moreover, as stated already a 'Trade Union' to enable it to espouse a matter need not be a recognised union. The judgment of the Apex Court referred to by the learned single judge was based upon the interpretation of the Bombay Industrial Relation Act, 1946 wherein the Industrial Court grants recognition to a Union after hearing the parties. The Act envisaged that at no point of time there shall be more than one recognised Union. The Apex Court was required to deal with the constitutional validity of Section 20(2) of the Maharashtra Recognition of Trade Unions and prevention of Unfair Labour Practise Act, 1972. The said Act is not attracted to the present matter.

The learned judge in the Andhra Pradesh case was concerned with Section 24 of the Regional Rural Bank Act 1976 which empowered the Government to give certain directions to the Central Government. It was in this back ground that the learned Judge held that the Officer's of the Bank were governed by the code of discipline and the matter of recognition was also governed by the code of discipline and as such the provisions of Trade Union Act were not attracted. Upon such findings, the learned judge dismissed the writ petition.

27. It may be stated that even under the provisions of Maharashtra Recognition of Trade Union and unfair Labour Practises Act 1972, an Unrecognised Union enjoys Statutory right to meet and discuss the individual matters with the employer. The Act grants statutory recognition to unrecognised Union for certain purposes in the later interest of Industries. This was recognised in 1995 Lab I.C. 242 Palmer and Loorie Workers Union, Bombay.

28. In the present case no government directions have been placed on record nor a code of discipline applicable to Officers has been placed on record, which may go to show that Officers could not become members of Trade Union. Hence in the particular circumstance of the case the contention that the Union is a composite one and hence cannot espouse the present dispute is without any basis. The Air Corporations Act 1953 in its Section 34 has a provision similar to Section 24 of the Regional Rural Bank Act 1976. The Management has not placed on record any direction of the Central Government or a code of discipline framed by the Corporation, which may prohibit an Officer from joining the Trade Union formed under the provisions of the Trade Union Act 1926. Even if it were to be so, it may entail an action against the Officer concerned but would not erode the right of the Trade Union to espouse the case of its workmen members. Hence I find that the contention has no factual or legal bases.

29. The next contention was that Air India Cabin Crew Association was a recognised Union and represented majority of the Air Hostesses and hence Air India Hostesses Association has no locus standi to raise the Industrial Dispute espouse the same.

In my opinion the judgment of the Apex Court in 1978 Lab SC 828 M/s. Tata Chemicals Ltd. furnishes a complete answer to this contention which lays down that even if the settlement regarding certain demand is arrived at otherwise during the conciliation proceeding between the employer and the Union representing the majority workmen, the same is not binding on the other Union which represent minority workmen and who was not a party to that settlement. Hence this contention also has no force.

30. The next contention of the Management in this regard is contained in para 4 of its reply, which inter alia seeks to say that prior settlements preclude raising of this dispute. Reliance in this connection is placed upon a settlement dated 29-3-86 which inter alia provided that all existing benefits, awards, settlements and agreements etc. shall continu unaffected except in so far they are specifically modified by any terms of the settlement. This settlement here may be modified under provisions of any law for the time being in force. It is stated that this was a settlement signed under the Section 12(3) of the Industrial Dispute Act before the Dy. Chief Labour Commissioner (Central) and Conciliation Officer, New Delhi dated 29th March 1986. However, the written statement of the Management itself shows that this settlement was modified by the settlement dated 10-5-90 covering the wage period 1-10-85 to 31-8-90. This settlement was signed by the Management with the Air India Cabin Crew Association and it is said that the same is subsisting and continuing. However, it is not been shown that this settlement was signed during conciliation proceedings and hence was of binding nature on the minority union. Hence I am of the view that the Air India Hostesses Association, even though may be a minority Association is entitled to raise the dispute and espouse the cause before this Tribunal.

30A. The Management pleaded that the terms of the reference of the present dispute were already part of NTB-1 of 1990 and therefore, the present dispute should be adjudicated alongwith main reference NTB-1 of 1990 before National Industrial Tribunal. Annexure 'A' reads as follows :

TO BE PUBLISHED IN THE GAZETTE OF INDIA
PART II SECTION 3 C 18-SECTION (ii)
Government of India/Bharat Sarkar
Ministry of Labour/Shram Mantralaya
New Delhi, the 7th December, 1990

ORDER

Whereas the Central Government is of the opinion that an industrial dispute exists between the employers is relation to the management of Indian Airlines and their workmen in respect of the matters specified in the Schedule hereto annexed which are either matters in dispute or matters appearing to be connected with or relevant to the said dispute and that the dispute involves questions of national importance and also is of such nature that the establishment of Indian Airlines situated in more than one State are likely to be interested in, or affected by, such dispute;

And whereas the Central Government is of the opinion that the said dispute should be adjudicated by a National Tribunal:

Now, therefore, the Central Government in exercise of the powers conferred by Section 7-B of the I. D. Act, 1947 (14 of 1947) hereby constitutes a National Industrial Tribunal with Head Quarters at Bombay and appoints Justice Shri S. N Khatri as its Presiding Officer; and/in exercise of the powers conferred by sub-section (1-A) of Section 10 of the said Act, hereby refers the said I. D. to the said National Industrial Tribunal for adjudication.

SCHEDULE

(i) In view of the MOU dated 26-2-1989 signed between the management and the All India Aircraft Engineers' Association, whether the new demands of the employees now raised in respect of matters covered by the MOU dated 26-2-1989 signed between Management of Indian Airlines and All India Aircraft Engineers' Association are legal and justified ?

(ii) If the answer to (i) is in the affirmative, whether the demands of Aircraft Engineers claiming relativity/parity with Aircraft Engineers of Air India is justified and if so to what extent and from what date should relief be applicable ?

(iii) In view of the MOU dated 16th December, 1988 signed between the Management and the IFEA, whether the demand now raised by the Association, in respect of matters covered by the MOU dated 16-12-88 signed between the management of IA and the IFEA is legal and justified ?

(iv) If the answer to (iii) is in the affirmative, whether the demand of the Flight Engineers claiming compensation for computing Delta LGT Delta N-2, Delta Oil Pressure and Delta Fuel Flow, is justified and if so, to what extent and from what date should the relief be applicable ?

(v) Whether there should be relativity/parity in the matter of wage structure between Indian Airlines and Air India with regard to comparable categories of workmen performing similar functions and if so, to what extent ?

(vi) Whether there should be any relativity in the matter of wage structure between various categories of workmen within IA and AI ? If so, how the relativity is to be determined and to what extent ?

(vii) What are the categories of employees in AI and IA who should be treated as workmen and non-workmen depending upon the nature of duties, wage structure and other privileges, perquisites and benefits applicable to the said employees ?

(viii) In view of the prevailing situation and anomalies in the wage structure within the two airlines and between the two airlines and in order to avoid conflicts on interpretation of the above issues as settled by the Tribunal, the Tribunal is also required to make the award relating to the following aspects of the terms and conditions of the employees of AI and IA for the period 1-9-90 onwards for a period of 5 years :

(a) Revised Pay scales and fixation of pay in the revised scales.

(b) Compensatory and other allowances, excluding Dearness Allowance.

(c) Hours of work.

(d) Shift working otherwise than in accordance with standing orders.

(e) Classification by grades.

(f) Rationalisation.

[No. L-11011/3/89-IR (Misc)]

RAJA LAL, Desk Officer

I have gone through the terms of reference in the said dispute and I do not find that the present dispute is in any way covered by any of the clauses of the reference dated 7th December, 1990. Hence, this contention is devoid of merit and is rejected.

31. The management vehemently contended that the dispute referred to the Tribunal is not an 'industrial' dispute at all. I have already referred to the schedule of reference. The schedule of reference goes to show that the Air India Air Hostesses Association challenges the action of the management in not providing any alternative employment on ground to Air Hostesses during the period of their pregnancy and also deprive them of their salary during the said period. Such a dispute clearly falls within the definition of industrial dispute as defined in Section 2(k) of the Industrial Dispute Act. This Section reads as follows :

> "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person ; ....
>
> "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on ....."

The Section is quite comprehensive and covers the disptute which is the subject matter of adjudication before this Tribunal Hence it is difficult to see how the dispute is not an 'industrial dispute'.

32. It was incidentally urged that in the statement of claim reference was made to Dy. Chief, Additional Chief and Chief Air Hostesses and it was interalia pleaded that the management was forcing the Air India Cadre "To remain forcibly out of work during their pregnancy". In this context it has been submitted by the management that Dy. Chief Air Hostesses and above do not form a part of cadre of Air Hostesses but they belong to Supervisory and Administrative cadre and hence the dispute does not remain an industrial dispute as against this category of Officers. Ms. Samant has vehemently urged that Dy. Chief Air Hostesses though designated to be Supervisory and Administrative Officers, were not really so and inspite of the glorious designation conferred upon them, they very much discharge the duties of Air Hostesses and hence were really workmen and pleadings of the Union do not take away the disptue from the domain of the industrial dispute as envisaged by Section 2(k) of the industrial dispute.

33. Hence, the question arises, if the schedule of reference can be so construed as to include Dy. Chief Air Hostesses within the purview of the Air Hostesses. A bare reading of a Deputy Chief Air Hostesses within the terms of reference Dy. Chief Air Hostesses was never included in the reference. Whether the Dy. Chief Air Hostesses continues to be in the cadre of Air Hostesses and is thus a 'workmen' as defined under the provisions of Section 2(S) of the Industrial Dispute Act, is not a subject matter of reference before me. The pleadings of the Union cannot convert the basic nature of the dispute referred to this Tribunal so as to include case of a Deputy Chief AirHostesses within the terms of reference. This Tribunal is a Tribunal of reference and adjudicates disputes referred to it as they are. Of course, it may deal with incidental questions but the question if a Dy. Chief

Air Hostess belongs to the cadre of Air Hostesses is not an incidental question but is a basic quetion qua the claim of Dy. Chief Air Hostesses and in my opinion I would not be justified in including Dy. Chief Air Hostesses within the purview of Air Hostesses for the purposes of this adjudication.

34. However, assuming though not admitting and not holding that Dy. Chief Air Hostesses fall within the cadre of Air Hostesses, I may, for the sake of argument see if Dy. Chief Air Hostesses could be included in the cadre of Air Hostesses who are admittedly 'workmen'. The Management has placed on record in this regard a record note dated 17th November 1983. This record note Exibit M-I reads as follows :

RECORD NOTE

November 17, 1983

Airising out of the Record Note dated April 11, 1983, between the Management and the representatives of the Air India Cabin Crew Association, discussions were held in regard to the promotional avenues to be evolved for the categories of Air Hostesses.

2. Persuant to the discussions, the following is agreed :

(i) A senior category of Air Hostesses will be created in the grade of Rs. 720—1300 and be designated as Sr. Check Air Hostesses. 60 Air Hostesses will be pomoted to this grade and be designated as such. Promotion to these posts will be on the basis of the existing promotion policy of the Corporation. The Sr. Check Hostesses will be eligible for the applicable Check Allowance and Overseas Operations Allowance at the rate of Rs. 140.

The Sr. Check Air Hostesses will be required to perform the same functions as that of other Air Hostesses. However, they would normally be scheduled to work in the First Class Cabin or in the Executive Zones In addition to their normal flying duties as an Hostess, they would also be required to impart training in flight to the new recruits who have completed the ground training and submit reports on them. The Sr. Check Air Hostesses will also carry out pre-confirmation, confirmation and annual checks on Air Hostesses. The Sr. Check Air Hostesses on would also be required to operate VVIP flights and undertake publicity assignments.

(ii) The Standard Force of the category of Deputy Chief Air Hostess will be increased to 20.

The primary functions of the Dy. Chief Air Hostess will be supervisory and Administrative and they will be treated as 'non-workmen'.

On board the aircraft the Dy. Chief Air Hostesses will be required to perform the same functions as that of the other Air Hostesses. However, they would normally be scheduled to work in the First Class Cabin or the Executive Zones. In addition to their normal flying duties as a Air Hostess, they would also be required to impart training in flight of the new recruits who have completed the ground training and submit report on them. The Dy. Chief Air Hostesses will also carry out pre-confirmation, confirmation and annual checks on Air Hostesses Check Air Hostesses and Sr. Check Air Hostesses. The Dy. Chief Air Hostess would also be required to operate VVIP flights and undertake publicity assignments and such of the other functions assigned to them from time to time.

(iii) The avenue of promotion for Air Hostesses will be through the categories of Sr. Check Air Hostess, Dy. Chief Air Hostesses Additional Chief Air Hostesses to Chief Air Hostesses.

For the purpose of posting abroad, the categories of Sr. Check Air Hostesses, Dy. Chief Air Hostesses, Additional Chief Air Hostesses and Chief Air Hostesses will have a separate rotation from of Air Hostesses and Check Air Hosteses. For this purpose, the postings of these categories would be restricted to one post of the total number of sets of Air Hostesses posted abroad.

The existing avenue of promotion of Asst. Flight Pursers, Flight Pursers and Flight Supervisors will continue unaffected and the hierchy abroad the aircraft for the various categories will remain as at present and there will be no change in the job functions of any category of cabin crews concurrence of this agreement.

The present ratio of Check Air Hostesses will be reduced to 3% of the total of number of Air Hostesses. Similarly, the number of Check Air Hostesses per set to be posted abroad would be reduced to .33 per set."

35. This record note categorically states that primary functions of Dy. Chief Air Hostess will be supervisory and administrative and they will be treated as "Non-workmen". Abroad the aircraft they are required to perform the same functions as that of other Air Hostesses. It would be proper to say that the post of Dy. Chief Air Hostesses is a promotional post in a higher scale of pay and carries administrative and supervisory duties. Moreover, the matter is not wholly res integra and has been decided by a judgment of Bombay High Court in writ petition No. 116 of 1984 Nargis Mirza and others V/s. Air India and another decided on 25th July, 1984. In the case 5 Air Hostesses of Air India challenged the validity of the record note referred to above and also challenged the contention of the Corporation that the Dy. Chief Air Hostesses were to be governed by the said note. The aforesaid judgment of Bombay High Court upheld the record note referred to above and said that the primary function of the Dy. Chief Air Hostesses will be supervisory and administrative in nature and they will be treated as a 'non-workmen'. The matter was taken in appeal before a Division Bench which upheld the judgment and dismissed the same, it being appeal No. 106 of 1984 Nargis Mirza v/s Air India Corporation and another decided on 31st October 1985. In the appellate judgment also it was recognised that the primary function of the Dy. Chief Air Hostesses will be supervisory and administrative and they will be treated as 'non-workmen'. Thus Deputy Chief Air Hostesses cannot be treated at par with Air Hostesses. However I am of the view that merely because in its claim, the union has included the cadre of Dy. Chief Air Hostesses for purposes of grant of relief it cannot be said that the dispute ceased to be an industrial dispute though competently referred to this tribunal by the appropriate government.

36. Miss. K. Samant relied upon 1987 Lab. I.C. 1035 Miss. Lena Khan vs. Union of India in support of the proposition that Dy. Chief Air Hostesses of Air India are Air Hostesses and do not belong to a seperate class. In that case the contention of the petitioner was that the Air India was discriminating between the Air Hostesses Air Indian origin from similar employees of Foreign origin qua their age of retirement. The question if Dy. Chief Air Hostesses was a workmen or not was not a subject matter of decision before Hon'ble the Supreme Court. The record note on the basis of which posts of Dy Chief Air Hostesses were created, was also not before their Lordship of the apex Court. It was only incidentally urged that petitioner was not an Air Hostess but belonged to a superior class. However, this contention was not accepted. As stated already the basic question before their Lordships of the Apex Court was whether the Dy. Chief Air Hosteses of Indian origin could claim parity in the matter of age of retirement with the Dy. Chief Air Hostess of Foreign origin. This basic contention was rejected.

37. Learned counsel for the union vehemently contended that in this case the onus lay on the management to show that the Dy. Chief Air Hostess was not a 'workman'. She relied in this conection upon 1980 (41) RIF 157 Woman Ganpat Raut v/s. Cadbury-Fry (India) Pvt. Ltd. In this judgment it has been held that onus to prove the issue whether petitioner was a workman within the meaning of definition of workman in section 2(s) of Industrial Dispute Act lies on the management and the management is required to discharge this initial onus. I think there can be quarrel with this proposition of law and I agree with Ms. K. Samant that the initial burden was on the management to show that Dy. Chief Air Hostesses were not work-

In this very connection she also relied upon 1985 SCALE—285. However the text of the judgment was not made available. Hence I am not in a position to say as to what was the ratio decidendo in that case.

38. In the present case, the position is slightly different. The appropriate government referred the dispute pertaining to Air Hostesses alone to this tribunal and if management were to contend that Air Hostesses were not workmen, a very heavey burden would be on it to prove as contention. However, in case of Dy. Chief Air Hostesses, the same consideration could not be applied. Firstly, the dispute as referred does not pertain to Dy. Chief Air Hostesses. Secondly, the documentary evidence placed in form of record note referred to above goes to show that Dy. Chief Air Hostesses were serving in supervisory and administrative categories and belonged to promotional cadre, seperate from the cadre of Air Hostesses. Of course, it is common ground that when Dy. Chief Air Hostesses are sent aboard the air craft they are also required to discharge the functions of Air Hostesses. But this does not change the basic nature of the cadre to which Dy. Chief Air Hostesses belong. By the Record Note in question the Dy. Chief Air Hostesses, apart from their normal duties are required to impart training to inright new recruits who have completed the ground training and submit reports on them. The Dy. Chief Air Hostesses are also required to carry out pre confirmation/ confirmation and annual checks on Air Hostesses, Check Air Hostesses and Sr. Air Hostesses. The Dy. Chief Air Hostess would also be required to operate VVIP nights and undetake publicity assignments and such of the other functions assigned to them from time to time.

39. The legality of document has not been challenged before me and as already pointed out it has been upheld by the Bombay High Court in Civil writ petition filed before it and referred to above. Moreover, Ms. Asha Mulgaokar in her affidavit of evidence stated as follows :

> "I say the first party requires the Dy. Chief Air Hostesses to perform supervisory and administrative functions only during ground assignments which is for a period of approximately 3 months in a period of three years. I say for the remaining period, she is required to perform the functions of an Air Hostess (workman). I therefore, say that the main functions performed by the Dy. Chief Air Hostesses are that of a workman whereas the supervisory/Administrative functions attached to the post are only incidental and marginal".

This testimony is not in keeping with the provisions of the record note which requires the Dy. Chief Air Hostess to impart in flight training to the new recruits who have completed the ground training and submit reports on them. The Dy. Chief Air Hostess are also required to carry out preconfirmation/conformation and annual checks on Air Hosteses, and Sr. Air Hostesses. This preconfirmation/ confirmation and annual checks can be made only when the Dy. Chief Air Hostess has seen the aforesaid subordinate categories of officials functioning aboard and not otherwise.

40. In cross examination Ms. Mulgaokar admitted :

> "For a workman category of Air Hostess, no ground duties are assigned. In my first pregnancy, I was in the category of workman Air Hostess but during my second pregnancy, I was in a higher category i.e. a Dy. Chief Air Hostess. As Dy. Chief Air Hostess assigned to ground duties, I am required to supervise work of the Air Hostesses on the Air Craft".

The aforesaid admission goes to show that the testimony of Ms. Asha Mulgaokar on this question is not very reliable and is contrary to the record note filed by the management. This record note is a document not in tune with the deposition of Ms. Mulgaokar and clearly lays down the duties of Dy. Chief Air Hostess aboard, as also on the ground. Hence, I am of the view that management has succeeded in showing that Ms. Mulgaokar was in the category of supervisory and administrative officer drawing salary of more than Rs. 1600 p.m.

41. Issue No. 3 : Now, I may examine the next point viz. whether the management is not justified in putting on the Air Hostesses from night duties on detection of the confirmation of their pregnancy ? In this regard the Union has submitted that pregnancy is not a disease or disability. The management of Air India is forcing Air Hostesses the remain away from her work 14 to 16 months from the day one of confirmation of her pregnancy even though it is not declared to be unsafe to fly and perform her duties. On behalf of the management it is submitted that this is a managerial prerogative and the nature of the duties of Air Hostesses require that upon confirmation of pregnancy she be not permitted to engaged on flying duties aboard and aircraft.

Miss. Asha Mulgaokar in para 18 of her statement has stated as follows :

> "I deny that Air Hostesses are unable to perform their duties. I say pregnancy is not a sickness or disability, I say there is no medical opinion to state that it is unsafe for an airhostess to fly and perform her functions for the initial period of her pregnancy till the pregnancy is advanced to cause concern. I say there is no provision in the Aircraft Rules to ground an Air hostess upon confirmation of pregnancy. I say there is no violation of air safety involved in allowing the Air Hostess to undertake flight duties when she is pregnant as there is no bar on the Air Craft Act and rules. I say the existing rules nowhere lay down that women pilots are unfit to operate flights on confirmation of pregnancy".

42. As against this, the management has examined Dr. L. P. Nakhwa to say that the work of a air hostess, is at the best of times a physically and mentally demanding job which puts strain on the body and the mind of the persons involved. She stated that the body of a pregnant woman undergoes very many changes since conception and till delivery to prepare for the birth of the child. Such changes leads to various restrictions on the extent of physical activity that the pregnant woman may undertake. She has cited certain examples in support of her statement. For example, a mother would be liable to sudden attacks of nausea which may be particularly servere in the mornings. She states that pregnant women suffer from morning sickness as early as in the 2nd and 3rd month of their pregnancy. This would make it very difficult for an air hostess to perform her duties if she is likely to get such an attack without warning in the midst of a flight. She has further stated to the effect that expectant mother is prone to suffer from black outs because of hormonal changes occuring during pregnancy and this common side effects commences from the second month and continues to 5th month of her pregnancy and it would be extremely dangerous if an air hostess were to black out while performing her duties on flight. In the case of black out, the mother needs immediate medical treatment including hospitalisation which may not be possible aboard an aircraft. In such a case there would be danger to the mother and the unborn infant and extreme inconvenience to passengers and other crew members. She further stated that during pregnancy a expecting mother puts on weight and her movements become slower and more unsteady. This is a physiological change which takes place in all mothers without exception. The work in the aircraft often requires great agility, dexterity and flexibility. She has stated that air hostesses have to pull and push heavy trolleys in narrow aisles to serve the passengers. She has stated that an air hostess cannot perform the job without a serious risk of harming herself or the child or the standard of service of the airline suffering. She has stated that in emergency situations have to act quickly and family to deal with the same. These situation might require passengers to be helped with their gas masks or life jackets or passengers to be helped in evacuating the aircraft by way of the emergency exist and slide and an expectant mother would not be able to discharge these functions. She has also stated that various other concronsistanst of pregency. For example, shortness of breath, bleeding and pain, shoot up of blood pressure etc.

43. The testimony of Dr. Nakhwa has been subjected to lengthy cross examination. Dr. Nakhwa is an M.B.B.S. having passed her degree examination in 1979. She took her Diploma (D.G.O.) in 1981 and passed her M.D. in the year 1982 and has been treating female patients since 1984.

44. I have carefully read her cross examination and do not find anything which may go to demonish her evidence in any substantial measure.

Miss. Sahani has quoted certain medical authorities in support of her contention that pregnancy would not be a disability in discharging proper and efficient service aboard an aircraft. She has referred to Williams Obstetrics 19th edition under the "Employment". The learned author has stated as follows :

> "Employment : The legal and social movements in the United States to provide equality of opportunity in the workplace have reached women who are or might become pregnant. Annas (1991) has thoroughly reviewed the legal issues involved with employment during pregnancy. Importantly, the United States Supreme Court has buttressed the Pregnancy Discrimination Act of 1978 by ruling in 1991 that federal law prohibits employers from excluding women from job categories on the basis that they are or might become pregnant.
>
> It is estimated that nearly one half of women of child bearing age in the United States are in the labour force. Even larger proportions of socio economically less fortunate women are working. According to the report of Naeye and Peters (1982) working during pregnancy can be deleterious to pregnancy outcome. They identified birthweights of infants whose mothers worked during the third trimester to be 150 to 400 g less than those of newborns whose mothers did not work, even though the length of gestation was the same for both groups. Reduction in birthweight was greatest for mothers who were underweight before pregnancy and whose weight gain during pregnancy was low, for mothers who were hypertensive, and for mothers whose work required standing. The data were collected between 1959 and 1966, and therefore the results were possibly influenced by the widespread practice of dietary restrictions and use of drugs then in vogue to try to control weight gain and dependent edema.
>
> Manshande and colleagues (1987) reported a sevenfold incidence of low birthweight infants in women from Zaire who worked hard in the fields. Teitelman and co-workers (1990) evaluated maternal work activity and pregnancy outcome in 4186 women delivered at Yale-New Haven Hospital. Women were classified according to the type of jobs they held. Standing jobs, such as those of a cashier, bank teller or dentist, required standing in the same position for more than 3 hours per day. Active jobs, such as physicians, waitresses, and real estate agents involved continuous or intermittent walking. Sedentary jobs such as librarian, bookkeeper, or bus driver, required less than an hour of standing per day. They found that pregnant women who work at jobs that require prolonged standing are at greater risk for preterm delivery, but this was not observed to have any effect on intrauterine growth. Klebanoff and colleagues (1990) also found that prolonged periods of standing (8 hours or longer per day) were associated with a small increased risk of preterm delivery in a prospective study of over 7100 women. However, heavy work, defined as sufficient to cause sweating was not found to be deleterious.
>
> Common sense dectates that any occupation that subjects the pregnant woman to severe physical strain should be avoided. Ideally, no work or play should be continued to the extent that undue fatigue develops Adequate periods of rest should be provided during the working day. Women with previous pregnancy complications that are likely to be repetitive. Such as, low birthweights infants, probably should minimize physical work."

44. I have carefully read the above opinion and in my opinion travelling by an ordinary pregnant travelling mother cannot be equitted to discharge of competent and efficient duties expected of an Air Hostess aboard an aircraft.

She cited TAMERS CYCLOPEDIC MEDICAL DICTIONARY to show the meaning of terms 'Black Out'. In aviators, temporary or transient loss of vision or consciousness is usually due to a fall of blood pressure in the head. This is caused by the centrifugal force experienced in high speed aircraft maneuvers. 'READ OUT' has been said to be a term used in aerospace medicine to describe what happens to the vision and central nervous system, i.e. seeing red and perhaps experiencing unconsciousness. When the aircraft is doing part or all of an outside loop at high speed or any other maneuver that causes the pilot to experience a negative force of gravity. This definition does not advance the case of the Union in any way. Some experts have been cited from Manual of Obstetrics from Holland and Brews from Shaw's text book of Gnyaecology. The experts pertain to gain of weight during pregnancy, morning sickness and common discomfort of pregnancy including Abortion and Miscarriage as also maternal disease.

It was submitted with some vehemence that since all pregnant ladies travelling on aircraft would undergo the various discomforts, even then it does not carry a great risk and therefore the management is not justified in putting off the air hostesses from duties on air craft in the air.

45. In my opinion the contention over looks the fact that air hostesses are required to perform arduous and streneous duties in an air borne aircraft and are required to serve competitively and efficiently. It is an age of global competition and the management is to take care that it renders efficient and competitive services to the travelling public. Of course, pregnancy by itself is not a sickness or disability in its entirety. However, it is bound to impair proper and efficient functioning of an air hostess in serving the public. Moreover, if pregnant Air hostesses are put on flying duties, mishaps during flights, resulting in unforseen injuries to Air Hostesses, may expose management to otherwise avoidable claims for compensation, for injuries sustained in the course of employment and the management cannot be compelled to expose itself to such self invited risk. Hence, basically it is a managerial decision and this tribunal would not be justific in labelling it as gender biased decision.

46. The Union in para 8 of its statement of claim has categorically admitted "Other female employees of the Corporation are allowed to work till the last day of their pregnancy period/till delivery. They are paid full salary and allowances during this period and are not forced to stay away from work during the entire period of their pregnancy". Had the management entertained a gender biased approach against its women employees, then it would not have permitted its other female employees to work till the last day of the pregnancy period/till delivery and would not have paid full salary and allowances during such period.

The above circumstances convincingly shows that a seperate treatment to air hostesses, in putting them off from flying duties, stands not on a gender biased angle but is based on other managerial and administrative considerations. Hence, I do not agree with the learned counsel for the Union that it is on the basis of a gender bias that air hostesses who are pregnant are taken off from active flying duties. Hence I decide this issue against the union and in favour of the Management.

47. Issue No. 4 : Now, I have to see, if the management ought to put pregnant air hostesses on ground duties during their pregnancy and if such an exercise is feasible. No material has been placed before me to say conclusively that ground duties at an airport are available in the equivalent scale of pay in which air hostesses are borne. Learned Counsel for the Union vehemently submitted that the Management should have put the entire material before this tribunal to enable it to adjudicate if it was not feasible for the management to put air hostesses on ground duty after confirmation of their pregnancy. It is submitted that since this has not been done, an adverse inference should be drawn against the management.

As against this learned counsel for the management submits that the Union has not placed any material on record to show that posts in equivalent scales of pay were available in the airports so that air hostesses may be accommodated against such vacancies during the period of pregnancy and hence management was under no obligation to lead evidence on this point.

48. I have considered the rival submissions. In my opinion, in view of the award that I propose to make, this discussion would not be of a material consequence because in my opinion in all fairness to its workmen, management may identify posts entailing ground duties against which expectant air hostesses may be accommodated during their pregnancies provided posts are lying vacant and do not require any specialised skills and are in the same scale of pay in which Aair Hostesses serve. This exercise can be best done by the management and not by me because I do not have proper and relevant data before me to adjudicate on this aspect of the matter. I can only say that in case where vacancies in equivalent pay scales are available and such vacant posts do not require any special skill or training, then management should identify such posts and as and when air hostesses get pregnant, should try to accommodate them against such vacancies.

49. In this context, I would like to remind the management that a contented work force is an asset to an Institution while a disgruntled and dissatisfied work force is always a liability. Sound principles of human resources development would require that the management should utilise its workforce in an optimum manner and provide them due job satisfaction so that they become real assets to the Institution they serve. Idling by expectant Air Hostesses may kill their initiative altogether and may add to their miserable plight during pregnancy. This would not be in keeping with sound principles of management. I leave this issue at that.

50. Issue No. 5 : Learned Counsel for the Union vehemently contended that India, i.e. Bharat has been a party to various International Labour Organisation Conventions and has also ratified them I.L.O. Convention No. 3 and Convention No. 103 deal with maternity protection. Convention No. 3 as adopted as back of 1919 and Revised Convention on maternity protection was adopted in 1952 stipulating six weeks pre-natal and six weeks anti-natal maternity leave with provision for special leave and medical leave during pre and anti natal periods. She referred to the provisions of the Maternity benefits Act, 1961 and Factories Act and to the Central Civil Services Leave Rules in support of the proposition that if air hostesses cannot be accommodated on ground duties during their pregnancy they ought to be granted leave with full back wages for the entire period of their pregnancy plus leave for pre-natal and post natal periods. In this connection, she submitted that Air India Corporation is a State within the meaning of the Article 12 of the Constitution of India and is not entitled to discriminate between its employees of one category with employees of another category male as well as female. She also referred to clause 9 of the Model standing orders and the Air India Employees Regulations as are applicable to the Officers of the Corporation. She also submitted that Air India had a scheme known as Annuity Scheme for the flying crew. Under this scheme, a flying crew, when declared medically unfit for flying duties, is paid a percentage of the salary per month, until he resumes flying duties on fitness. Air Hostesses who are required to stay at home on detection of pregnancy are not allowed similar benefits. She also referred to the Constitutional right of the Air Hostesses for being treated at par with the male cabin crew known as "Air Purses". She also urged that by forcing Air Hostesses to take leave for the entire pre-natal, pregnancy and post natal periods excluding maternity leave the management was discriminating against them.

51. On behalf of the management it has been vehemently contended that determination on all these aspects was a managerial prerogative and this tribunal has no jurisdiction to grant reliefs prayed for by the Union. It was further submitted that no constitutional right of the Air Hostesses has been violated and no discrimination was practised vis-a-vis other workmen similarly placed.

52. I have considered the rival contentions and given my earnest consideration to them. There is no gain saying the fact that under the Directive Principles of the Constitution the citizens, man and woman have the right of adequate means of livelihood. The deprivation of means of livelihood impinges upon the right of life guaranteed by the Constitution of India. There is also no gain saying the fact that the management cannot discriminate amongst its employees who were similarly situated, and is required to give them an equal treatment. But it is also a settled law that the State is entitled to make a reasonable classification. It is also settled that the areas governed by administrative and managerial prerogative are not to be interfered by this tribunal. However, in one way this tribunal stands apart from all other courts in the sense that in settling the disputes between employers and workmen, the function of the tribunal is not confined to administration of justice in accordance with agreements and terms and conditions entered into between the parties but it can confer rights and priveileges on either party which it considers reasonables and proper, though they may not be covered by terms of any existing agreement. It has not merely to interpret given facts to the context of right and obligations of the parties. It can create new rights and obligations between them which are considered essential for keeping industrial peace. Bharat Bank Ltd. v/s its employees 1951 LLJ 921. The apex court in Rohtas Industries Ltd. v/s Pandey 1956 II LLJ 444 (449) observed that a court of law proceeds on the footing that no power exist in Courts to make contracts for people; and the parties must make their own contracts. The Courts reach their limits of power when they enforce the contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of the industrial peace".

53. In Premier Automobiles Ltd. v/s. Kamlakar Shantaram vade 1975 II LLJ 445 (450) the Apex Court observed as follows :

> "Powers of the authorities deciding industrial disputes under the Act are very extensive, much wider than the powers of a Civil Court while adjudicating a dispute, which may be an industrial dispute. The Labour Courts and the tribunals to whom industrial dispute are referred by the appropriate government under section 10 can create new contracts, lay down new industrial policy for industrial peace, order reinstatement of dismissed workmen which ordinarily a Civil Court could not do."

54. It is in the light of the aforesaid guiding propositions of law that I shall have to consider the claims of the Union. It is an agreed position between the parties that the air hostesses, on being pregnant have to remain away from their work for 14 to 16 months from the time their pregnancy is confirmed. This position is stated in para 2 page 2 of the statement of claim of the Union. The management has made a statement almost to the same effect in the following words:

> "As per our experience it shows that normally Air Hostesses due to maternity avail 14 months leave."

This would go to show that an Air Hostess would normally require 14 months leave if she becomes pregnant. The maternity leave admissible at present is upto a period of 90 days with pay. The rest of the absence from duty is adjusted against their privilege leave/Sick Leave and if no privilege or sick leave is due, it is treated as absence from leave without pay. In my opinoon, this deserves amelioration. Maternity is a glorious culmination of the marital bliss and domestic felicity and places Air Hostesses seeking motherhood in a far greater disadvantaged position, than the other female employees of the Corporation, discharging ground duties. A balance deserves to be struck, so that Air Hostesses can enjoy the glory of the motherhood, consistent with the dictates of their duties. I am aware of the principle "No work no pay". But, where idleness is forced and compulsive, an innovation shall have to be made, so that competing claims get properly balanced. The issue is decided accordingly.

55. RELIEF : The Management should within 3 months of the Award, identify posts in equivalent scales of pay in various ground cadres, in which Air Hostesses may be accommodated in the event of their pregnancy for discharging ground duties, provided such duties do no involve specialised training or special skills. As and when an Air Hostess becomes pregnant and the pregnancy is confirmed, she may be put on ground duty on an equivalent post of the nature mentioned provided a vacancy exists. In case, such a vacancy

exists and has been filled up by stop gap or ad-hoc arrangement, such an adhoc or stop gap arrangement must be terminated to accomodate an Air Hostess whose pregnancy is confirmed. Such an Air Hostess may be allowed to serve against such vacancy till the time she can properly discharge the duties of such post. However, in case no vacancy is available against which such a pregnant Air Hostess may be accommodated then the 'Annuity Scheme' for the flying crew serving in equivalent scale of pay should be made available to her and she should be paid a percentage of the salary per month in accordance with such an existing Annuity Scheme, till she is fit to resume flying duties. However, this benefit shall be extended only for two pregnancies through out the service carrier of an Air Hostess. I make an Award accordingly. In the circumstance of the case, I leave the parties to bear their own costs.

56. Before parting, I would like to record my thanks to Ms. K. Sawant and S/Shri E. P. Bharucha, Shri Abhay Kulkarni and Shri Z. Zamdin for rendering valuable assistance to me in adjudicating this dispute.

R. S. VERMA, Presiding Officer

नई दिल्ली, 1 अगस्त, 1997

का.आ. 2138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी.एल. के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं.-1), धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-97 को प्राप्त हुआ था।

[एल-20012/17/93-आईआर(सी-I)]
ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 1st August, 1997

S.O. 2138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M|s. BCCL and their workmen, which was received by the Central Government on 31-7-1997.

[L-20012|17|93-IR(C-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD.

In the matter of a reference under Sec. 10(1)-(d)(2A) the Industrial Disputes Act, 1947.

Reference No. 18 of 1994.

PARTIES

Employers in relation to the management of Kusunda Colliery of M|s. B.C.C. Ltd.

entitled to?"

AND

Their Workmen.

PRESENT :

Shri Tarkeshwar Prasad,
Presiding Officer.

APPEARANCES :

For the Employers : Shri S. N. Sinha, Advocate.

For the Workmen : Shri S. C. Gour, Advocate.

State : Bihar. Industry : Coal.

Dated, the 23rd July, 1997.

AWARD

By Order No. L-20012|17|93-I.R.(Coal-I) dated 16-2-94 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of Kusunda Colliery of M|s. Bharat Coking Coal Ltd. in not assessing the age of Shri Uma Mahato by Apex Medical Board is justified? If not, to what relief the workman is entitled to?".

2. The order of reference was received in this Tribunal on 21-2-1994. After notice the parties filed their respective written statements, rejoinders and documents. Thereafter the case was fixed for hearing.

3. On 14-7-97 when the case was taken up for hearing Shri S. C. Gour, Advocate, appearing on behalf of the Union submitted that the sponsoring Union did not want to pursue with the case and prayed to close the case.

4. In view of the submission made on behalf of the Union, I render a 'no dispute' award in the present reference.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 1 अगस्त, 1997

का.आ. 2239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. -1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-7-97 को प्राप्त हुआ था।

[एल-20012/51/92-आईआर(सी-I)]

ब्रज मोहन, डैस्क अधिकारी

New Delhi, the 1st August, 1997

S.O. 2139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1) Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M|s. BCCL and their workmen, which was received by the Central Government on 31-7-1997.

[L-20012|51|92-IR(C-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD.

In the matter of a reference under Sec. 10(1)-(d)(2A) the Industrial Disputes Act, 1947.

Reference No. 137 of 1992.

PARTIES :

Employers in relation to the management of Kusunda Colliery of M|s. BCCL.

AND

Their Workmen.

PRESENT :

Shri Tarkeshwar Prasad,

Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : None.

State : Bihar. Industry : Coal.

Dated, the 23rd July, 1997.

AWARD

By Order No. L-20012(51)|92-I.R. (Coal-I) dated 2-12-92 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management in not accepting the date of birth of Shri Ram Das Mahato as 1-7-1935 is justified? If not, to what relief the workman is entitled?"

2. The order of reference was received in this Tribunal on 15-12-1992. Thereafter notice was sent to file written statement on behalf of the workmen. Despite several adjournments no written statement was filed on behalf of the workman. Thereafter registered notice was sent to the sponsoring union which was returned back. It, therefore, appears that neither the sponsoring union nor the workman is interested to pursue the reference case.

3. In such circumstances, I render a 'no dispute' award in the present reference case.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2140.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया, कलकत्ता के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार 6-8-97 को प्राप्त हुआ था।

[संख्या एल०-12012/151/88-डी० II (ए०)]

पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 8th August, 1997.

S.O. 2140.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on the 6-8-1997.

[No. L-12012 (151)/88-D. II (A)]

P. J. MICHAEL, Desk Officer.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA.

Reference No. 162 of 1988.

PARTIES :

Employers in relation to the management of State Bank of India, Calcutta.

AND

Their Workmen.

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCE :

On behalf of Management . Mr. V. R. Gopalratnam, Law Officer of the Bank.

On behalf of Workmen : Mr. S. Dutta, General Secretary of the Union.

STATE : West Bengal. INDUSTRY : Banking.

AWARD

By Order No. L-12012(151)/88-D. II(A), dated 12th September, 1988, the Central Government in exercise of its powers under section 10(1)(d) and (2-A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of State Bank of India Local Head Office, 1 Middleton Street, Calcutta in refusing payment of the special allowance of sanitary fitter to Shri Natabar Khiller, Cleaner-cum-Plumber is justified ? If not, to what relief is the concerned workman entitled ?"

2. When the case was called out today, representatives of the management as well as the union submit that the matter in dispute has been mutually settled by the parties themselves and filed a memorandum of settlement dated 9-7-1997. They pray for an Award in terms of the said memorandum of settlement.

3. I have gone through the memorandum of settlement which appears to be legal and fair.

4. The reference is accordingly disposed of in terms of the settlement, which shall form part of the Award as Annexure-A.

This is my Award.

Dated, Calcutta.
The 28th July, 1997.

Sd./-

A. K. CHAKRAVARTY, Presiding Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCUTTA

CASE NO. 162 OF 1988

AGREEMENT BETWEEN THE STATE BANK OF INDIA AND ITS WORKMEN REGARDING AN INDUSTRIAL DISPUTE IN RESPECT OF PAYMENT OF SPECIAL ALLOWANCE OF SANITARY FITTER TO SHRI NATABAR KHILLER.

Dated : 9-7-1997.

Name of the Parties :—

(A) Representing Employer (STATE BANK OF INDIA) :

Shri G. V. Pai,
Asstt. General Manager,
(Personnel & HRD),
State Bank of India,
Calcutta LHD.
Shri P. C. Ghatak,
Asstt. General Manager,
(Estate Department),
State Bank of India,
Calcutta LHO.
Shri A. K. Das Ghosh,
Asstt. General Manager,
(Office Administration),
State Bank of India,
Calcutta LHO.

(B) Representing Workmen :

Shri Dipen Banerjee,
Circle President,
SBI Staff Association,
(Bengal Circle),
13, Crooked Lane,
Calcutta—700 069.
Shri Sankareswar Dutta,
General Secretary,
SBI Staff Association,
(Bengal Circle),
13, Crooked Lane,
Calcutta--69.
Shri Natabar Khiller,
Cleaner-cum-Plumber,
State Bank of India,
Calcutta LHO.

SHORT RECITAL OF THE CASE

Whereas the concerned workman was working at the Local Head Office of State Bank of India, Calcutta under a contractor, M/s. Cleaners India, performing the following duties :—

To look after the defects of pipes, inner/outer portion in urinals, comode, basin, water-line, cleaning by necessary materials to be supplied by the Bank, repairing jammed/choked lines.

Whereas pursuant to the abolition of Contract Labour practice at the said LHO, the workman was absorbed in the Bank with effect from 30-8-1983 and was allotted the same duties as he was perform-

ing under the contractor, as aforesaid, and was given a designation as Cleaner-cum-Plumber.

Sd./ Sd./-

Whereas at the time of his absorption, there was no provision of any Special Allowance either for Sanitary Fitter or for Plumber.

Whereas the provision of a Special Allowance for the Sanitary Fitter came into force on 17-9-1984, with retrospective effect from 1-7-1985, in terms of an agreement, known as the IVth Bipartite Settlement, entered into between the Indian Banks Association and NOBE/AIBEA Unions of workman staff.

Whereas the State Bank of India Staff Association (Bengal Circle) raised a dispute vide their letter dated 27-8-1987 before the Regional Labour Commissioner (Central), Calcutta questioning the action of the Bank in refusing payment of Special Allowance of a Sanitary Fitter to the workman. The Association's claim was, however, disputed by the Bank on the ground that Shri Khiller is not performing all the duties of Sanitary Fitter and is also not holding the requisite qualification.

Whereas upon failure of the conciliation proceedings the following reference was made to the Central Government Industrial Tribunal, Calcutta for adjudication.

> "Whether the action of the Management of SBI, LHD in refusing payment of Special Allowance of Sanitary Fitter to Shri Khiller, Cleaner-cum-Plumber is justified ? If not, to what relief is the concerned workman entitled ?"

Whereas during the pendency of the dispute before the Ld. Tribunal in the matter the Special Allowance for Plumber post was provided with effect from 1-6-1989 and the same has been paid to the workman.

Whereas the Association was not satisfied with the payment of Special Allowance, applicable to Plumber, to Shri Khiller and persisted with the dispute.

Whereas the matter is still pending and is being argued before the Ld. Tribunal.

Sd./- Sd./

(h) The Settlement thus arrived will be full and final and will be presented before the Ld. Tribunal.

(i) The Settlement will be given effect only after it is being recorded and registered with the Ld. Tribunal.

SIGNATURE :—

On behalf of Bank :

Sd./-

(1) Shri G. V. Pai,
Asstt. General Manager,
(Personnel and HRD),
State Bank of India,
Calcutta LHO.

Sd./-

(2) Shri P C. Ghatak,
Asstt. General Manager,
(Estate Department),
State Bank of India,
Calcutta LHO.

Sd./-

(3) Shri A. K. Das Ghosh,
Asstt. General Manager,
(Office Administratinon),
State Bank of India,
Calcutta LHO.

On behalf of Workman :

Sd./-

(1) Shri Dipen Banerjee,
Circle President,
SBI Staff Association,
(Bengal Circle),
13, Crooked Lane,
Calcutta—700 069.

Sd./-

(2) Shri Sankareswar Dutta,
General Secretary,
SBI Staff Association,
(Bengal Circle),
13, Crooked Lane,
Calcutta—700 069.

Sd./-

(3) Shri Natabar Khiller,
Workman,
State Bank of India,
Calcutta LHO.

Whereas during pendency of the dispute before the Ld. Tribunal the Bank and the representatives of the workman have decided to settle the dispute, as per the terms and conditions appearing hereinafter :—

TERMS OF SETTLEMENT

(a) The workman will be granted Special Allowance of Sanitary Fitter by suitably modifying his duties and responsibilities ;

(b) Shri Khiller will be designated as Sanitary Fitter and he will be performing all the duties of Sanitary Fitter in addition to the duties he has been performing and will be responsible for the same ;

(c) The date from which Shri Khiller will be granted the Special Allowance of a Sanitary Fitter will be 30-8-1983, i.e. his date of absorption in the Bank ;

(d) Shri Khiller will have to acquire knowledge in writing in any two of the following

languages within one year from the date of Settlement, thus arrived :—

Regional language, Hindi and English.

(e) No interest will be paid by the Bank on the amount payable pursuant to (a), (b) and (c) above ;

(f) Special Allowance of Plumber already paid to the workman and is being paid till the finalisation of the Settlement will be adjusted at the time the Special Allowance of Sanitary Fitter is paid to the workman ;

(g) The said Settlement has been arrived at by the Management and the Representatives of the workman exclusively for Shri Natabar Khiller and will not be treated as precedent. The Management is at liberty to fix the respective qualifications, eligibility criteria, duties and responsibilities, etc. while appointing Plumber and/or Sanitary Fitter in future.

Sd./-

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2141 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडियन ग्रामा बैंक सातूर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, तमिलनाडु, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[संख्या एल 12012/169/93 आई०आर० (बी०-I)]

पी० जे० माईकल, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Tamilnadu, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Pandian Grama Bank Sattur and their workman, which was received by the Central Government on 6-8-1997.

[No. L-12012/169/93-IR (B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU

MADRAS

Friday, the 4th day of April, 1997

PRESENT :

Thiru S. Thangaraj, B.Sc. L.L.B., Industrial Tribunal.

Industrial Dispute No. 109 of 1993

[In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Pandian Grama Bank, Sattur].

BETWEEN

Shri S. Senthilnathan,
C/o The General Secretary,
Pandian Grama Bank Employees Association,
P.S. No. 46, Sattur 626203.

AND

The Chairman,
Pandian Grama Bank,
135/9, Vembakottai Road,
Sattur-626203.

REFERENCE :

Order No. L-12012/169/93-IR (B-I) Ministry of Labour dated 26-11-93, Government of India, New Delhi.

This dispute coming on for final hearing on Monday, the 17th day of February 1991, upon perusing the claim, counter and all other material papers on record, and upon hearing the arguments of Tvl. Aiyar and Dolia, R. Arumugam and B. Haribabu, Advocates appearing for the petitioner-worker and of Tvl. N. G. R. Prasad, S. Vaidyanathan and K. Indira, Advocates appearing for the respondent-management, this Tribunal made the following

AWARD

Government of India, vide their Order No. L-12012/169/93-IR (B-I) Ministry of Labour, dated 26-11-93, have referred this dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947 for adjudication of the following issue :

"Whether the action of the management of Pandian Grama Bank in terminating the services of Shri Senthilnathan vide Order No. AID/ID/117/25/88 dated 30-8-89 is legal and justified ? If not, to what relief the workman is entitled."

2. On service of notices, both the petitioner and respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3 The main averments found in the claim statement filed by the petitioner are as follows :

The petitioner was employed in the respondent Pandiyan Grama Bank as Sweeper-cum-Messenger in T. Mariyur branch. The respondent issued a charge sheet dated 2-7-88 alleging that the petitioner was indulged in immoral activities and as a result of which and as a result of which the local jamad evicted him village and his overnight stay at Mariyur was prohibited and thereby caused damage to the image of the bank among public, that he absented himself from duty frequently and casual inconvenience to the bank and that he demanded illegal gratification from the sheep loan beneficiaries and obtained Rs. 40 from one Ponnuchamy Thevar. The charge are vague and bereft of details. The copies of written complaints have not been furnished to him. One Mr. S. A. Mohammed Ismail, Manager Naduvaval branch was appointed as Enquiry Officer who was biased and one sided. No independent witnesses were examined in the enquiry to prove the charges. The findings of the Enquiry Officer was totally perverse. However, the Enquiry Officer held that charge No. 3 was not made out. The enquiry was not fair and proper. As the charge against the petitioner was on a punishment passed by the Muslim Jamad, appointing a man from the same religion as Enquiry Officer has prejudiced the case of the petitioner. The enquiry is totally vitiated MWs-1 and 2 are totally unconnected and their are interested witnesses. No person from Jamad was examined as a witness. The entire enquiry proceedings are marred by gross procedural irregularities. The respondent and the Enquiry Officer have procured a letter from the Jamad, nine months after the alleged occurrence which would go to show that the charge sheet was issued without basic complaint. Award may be passed for reinstatement, continuity of service and back wages.

4. The main averments found in the counter filed by the respondent are as follows :

> The petitioner was engaged on temporary basis on 20-11-85 and was initially working in Paramakudi branch. He served as sweeper-cum-messenger in Kamanakottai, T. Mariyur, and Vayalli branches. He had worked in the bank for 3 years and 9 months. While he was working in T. Mariyur branch, it was found that he was indulging in immoral activities and that he demanded illegal gratification from the sheep loan beneficiaries. Show cause notice was served on the petitioner on 7-7-88 enclosing the charge sheet received from the constituents of the bank. Based on the charge sheet, a detailed enquiry was held. The petitioner was given full opportunity to participate in the enquiry. He was allowed to cross-examine the management's witness. The Enquiry Officer gave his findings holding that first and second charges against the petitioner were proved. On considering the findings and other relevant materials the order of dismissal was passed on 30-8-89. The petitioner filed an appeal before the competent authority which was dismissed on 18-5-90. On 22-11-88 the first day of the enquiry, the petitioner appeared with his defence representative and clearly admitted that he understood the charges and thereafter denied the same. He never expressed that the charges were vague and he was not able to give any explanation due to the vagueness of the charges. He has also not raised any objection that the enquiry was biased. The document sent by the Jamad was marked and the petitioner never disputed the genuineness of the document. It was established that the petitioner was in the habit of absenting himself without prior permission. The evidence of MW-1 and MW-2 and Ex. M-8 if read together, coupled with the fact that the petitioner was evicted and overnight stay was prohibited will prove the fact that he was involved in immoral activities. The bank is run on the basis of trust, truth, faith and confidence on the employees. The punishment awarded to the petitioner is proportionate to the misconduct alleged and proved against him. The petitioner by indulging in immoral activities, tarnished the image of the bank. He was also irregular in attendance and the bank could not afford to have such an employee in their service. Hence industrial dispute may be dismissed.

5. No witness was examined on both sides. The petitioner has marked Ex. W-1. The respondents have marked Exs. M-1 to M-28.

6. The Point for our consideration is : Whether the action of the management of Pandian Grama Bank in terminating the services of Shri Senthilnathan vide Order No. AID/ID/117/2588 dated 30-8-89 is legal and justified ? If not, to what relief the workman is entitled ?"

7. The point—The petitioner-workman Senthilnathan was working as a sweeper-cum-messenger at T. Mariyur of the respondent Pandian Grama Bank. On 7-7-88 the bank gave him a show cause notice-cum-charge on three grounds. first, that he was indulging in immoral activities and as a result of which the local Jamad evicted him from the village and his overnight stay at Mariyur was prohibited and thereby he damaged the image of the bank among the public. Secondly that he had absented from duty frequently and caused inconvenience to the bank management and that he was not discharging the duties entrusted to him in the manner required from him. Thirdly, that he had demanded illegal gratification from the sheep loan beneficiaries viz. Mr. M. Sathianathan, Mr. M. Ponnuchamy Thevar, and Mr. S. Parmar and obtained Rs. 40 from Mr. Ponnuchami Thevar. ted and the workmen fartiufated in the enquiry alongwith his Thever. On the said charges, a domestic enquiry was conduc- defence representative.

8. The first charge was for indulging in immoral activities as a result of whch the local Jamath evicted him from the village and his overnigtht stay at Mariyur was prohibited that thereby he damaged image of the bank among the public. The Jamath had sent a letter marked as Ex. M-17 on 17-12-88. The charge Ex. M-14 has been framed on 7-7-88 but whereas the complaint was given on 17-12-88. From that one can say that the complaint has been obtained after framing of the charge. However, the charge was for indulging in immoral activities whereas Ex. M-17 was for quarrelling with the inmates of a house after having consumed liquor. Quarrelling with the inmates of a house cannot be considered to be an immoral act. Even for the said act of quarrelling with the inmates of the house after having consumed liquor neither the members nor anybody else who witnessed the occurrence had been examined before the Enquiry Officer. Trustee of Muslim Oravimunnai Jamath, T. Mariyur was also not examined to speak about the fact of evicting him from village and his overnight stay in the said village was prohibited. Originally three witnesses were proposed to be examined on the side of the management but however, all the three witnesses were not examined during the enquiry. The two persons who were examined on the said of the management in the enquiry are Shri A. Ramu, Senior Clerk-cum-Cashier, and Shri M. Soundara Nageswaran, Officer-in-charge, of T. Mariyur branch of the Pandiyan Grama Bank. These two witnesses are only officials of the bank and they had no personal knowledge of what had happened regarding the first charge framed against the workman. MW-1 Ramar has stated that he had participated in the Jamath meeting and the decision was conveyed to the workman. However, when there is no evidence regarding the commission of said misconduct, the decision of the Panchayat will not prove the charge of indulging in immoral activities. Ramu in his cross-examination has admitted that at the time of occurrence, the male member of the house was present and that he did not know with whom the petitioner and another person quarrelled on that day. Considering all the facts, the evidence available on the side of the management is insufficient to hold that the pettioner indulged in immoral activities. Quarrelling after having consumed liquor cannot be taken as immoral activity.

In Management of Tractors and Farm Equipments Ltd., Vs. I Add. Labour Court Madras (1982 II LLJ P. 403), at page 400 over High Court held :

> "It cannot be said that drinking is considered by society to be so base or vile as to characterise a man who consumes liquor as one of depraved character or as one who is to be looked down by society." I am emphasizing this aspect only to show that drinking as such is not considere as harmful to society in general or contrary to accepted rules of rights and duties between men and men."

From the above decision, it cannot be stated that drinking liquor will not be moral turptitude. Quarrelling with another man cannot be considered as moral turptitude. The alleged quarel must have been occurred for many reasons. Except the action taken on the Jamath no other action has been taken against him by any authority constituted under law. It may be a fact that as per the decision of the Jamath he could have left the village and stayed in some other village. However, that will not satisfy the charge that he indulged in immoral activities. It was also argued on the side of the petitioner that the said charge was vague and bereft of particulars. While reading the charge, any body will feel that it was vague and benefit of particulars. While charging a person, the particulars of the date, time, place of the commission of the occurrence, and the person against whom the said act was committed and the actual act alleged to have committed by the petitioner should be stated. The said charge contains no such particulars. Therefore, there is no sufficient evidence in the charge as well as in the the evidence let in before the Enquiry Officer.

9. The management further relied on a letter given by one Ibrahim marked as Ex. M.11 wherein he has stated that due to some ill feeling

between him and the petitioner, he had voluntarily with held two cheques by not sending them for collection. However, Ibrahim was not examined before the Enquiry Officer. The fact of receipt of cheque in the Branch office and also how the petitioner withheld those two cheques by not sending them for collection are matters to be proved in such a charge. There is no separate charge for withholding of two cheques by the petitioner. However, this aspect has to be considered to find out as to whether the petitioner had damaged the image of the bank among public which forms part of the first charge. Neither MW1 nor MW2 had given any satisfactory evidence regarding the said allegation contained in the letter of Shri Ibrahim. However, this letter is not separately marked through it was marked as ME3 in the departmental enquiry. Any how there is no proper evidence on record to prove allegations contained in the letter. It is only in this letter it was alleged that the petitioner misbehaved with a lady. As already stated, there is no proof worthy of acceptance to prove the said allegation against the petitioner. When both the allegations are found to be not proved, the charge that the petitioner has brought damage to the image of the bank has not been made out. When we consider the entire evidence of MW1 and MW2, it lacks sufficient materials to prove the said charge against the petitioner. Therefore, for all the above reasons, charge No. 1 has not been proved. The findings of the Enquiry officer that charge No. 1 has been proved is not based on materials available on record and the same cannot be accepted.

10. The second charge was for habitual absence. Ex. M-1 to M-10, M-13, M-15, M-16 and M-18 are all documents to prove the habitual absence of the petitioner. In Ex. M-18, unauthorised absence on various dates by the petitioner have been stated. However, except for his overstay on 25th April, 1988, on all other occasions he had sent leave letters and the same have been accepted by the Management. His medical leave applications have been ratified by the management. It seems the petitioner had failed to inform his absence well in advance and getting permission of the authorities concerned. However, Medical leave is an exception to this rule for the reason that one may not know as to when one will fall sick. Most of the leave applications submitted by the petitioner were on urgent contingencies and therefore, the reason of falling sick cannot be taken as habitual absence. However, when once will these applications were ordered and the leave applied for by the petitioner was sanctioned the management cannot go back by accusing him that he has been habitually absented from duty. As the workman had applied for medical leave on most of the occasions, the same cannot be considered as habitual absence. In Ex. M. 11, regarding the charge habitual absence, no particulars have been given. This charge is also bereft of particulars. It has been stated "he is in habit of absenting from service in many instances." A mere reading of the charge would go to show that from what is stated in the charge no one can get a clear idea for what the said charge has been framed. The second charge is also as vague as vagueness could be. As the petitioner has applied for medical leave for most of the occasions and all the leave applications were granted by the management except that one day absence on 25-4-88, it cannot be said that the petitioner has habitually absentee from duty. Therefore, there is no sufficient material regarding the charge No. 2, and the same has not been proved.

11. The Enquiry Officer gave his findings Ex. M.22. Thereafter, the petitioner's services were terminated with immediate effect under Ex. M. 23. No opportunity was provided by the respondent by seeking the findings of the Enquiry Officer before passing he final order. In ECIL, HYDERABAD Vs. B. KARUNAKAR (1994 I LLJ P 162) at page 177 the Apex Court held :

> "Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and herefore, invalid."

As he denial of opportunity by not sending copy of the findings to him to get his explanation amounts to denial of natural justice, final order passed by the management has to be held as invalid.

12. The Enquiry Officer has already held in his findings Ex. M.22 that the third charge regarding demanding and getting illegal gratification has not been proved. Management also has not taken any further action against the findings of the Enquiry Officer. Therefore, there is no necessity to go through the third charge. As rightly pointed out by the Enquiry Officer, there was no sufficient material to prove the third charge regarding demanding and receiving of illegal gratification.

From the foregoing discussion, it is clear that sufficient material on record to prove the said charge Nos. 1 and 2 are vague and there is no charges. In such circumstances, it has to be held that the charges have not been proved against the petitioner.

In the result, award is passed holding that the action of the management of Pandian Grama Bank, terminating the services of Shri Senthilnathan, is not justified, and the petitioner is entitled for reinstatement, continuity of service, backwages and all other attendant benefits. No costs.

Dated, this the 4th day of April 1997.

Sd/-

Industrial Tribunal

WITNESSES EXAMINED

For both sides : None.

DOCUMENTS MARKED

For Petitioner|workmen :

Ex. W-1|10-8-88 : Petitioner's explanation to Chairman, Respondent bank (xerox copy).

For Management side :

Ex. M-1|14-1-88 : Departmental letter forwarding petitioner's leave application (xerox copy).

M-2|27-1-88 : Departmental letter forwarding petitioner's leave application (xeroxcop medical & fitness certificate (xerox copy).

M-3|14-4-88 : Departmental letter forwarding privilege leave application (xerox copy).

M-4|1-2-88 : Letter from respondent regularising medical leave (xerox copy).

M-5|18-4-88 : Letter from Head Office sanctioning 2 day's leave (xerox copy).

M-6|April '88 : Xerox copy of Sweeper wages-cum-leave statement of petitioner (xerox copy).

M-7|April '88 : Extracts from Attendance register (xerox copy).

M-8|9-5-88 : Departmental letter forwarding leave application & medical certificate of petitioner (xerox copy).

M-9|11-5-88 : Respondent's letter regularising petitioner's medical leave (xerox copy).

M-10|24-5-88 : Departmental letter forwarding list of charges against petitioner (xerox copy).

M-11| : Complaint of Ibrahim, L.I.C. Agent (xerox copy).

M-12|20-6-88 : Departmental letter forwarding complaint of sheep loan beneficiaries (xerox copy).

M-13|7-7-88 : Respondent's letter stating inability to serve transfer order on petitioner (xerox copy).

M-14|7-7-88 : Charge sheet-cum-Show Cause notice (xerox copy).

M-15|16-7-88 : Petitioner's leave application (xerox copy).

M-16|18-7-88 : Departmental letter forwarding petitioner's leave application (xerox copy).

M-17|17-12-88 : Jamath's letter (xerox copy).

M-18|22-12-88 : Departmental letter informing particulars of unauthorised absence of petitioner (xerox copy).

M-19|14-2-89 : Respondent's written arguments (xerox copy).

M-20|4-3-89 : Written arguments of defence (xerox copy).

M-21| : Enquiry Proceedings (xerox copy).

M-22|18-7-89 : Findings of the Enquiry Officer (xerox copy).

M-23|30-8-89 : Dismissal Order (xerox copy).

M-24|17-10-89 : Appeal preferred by petitioner (xerox copy).

M-25|18-5-90 : Order of Appellate Authority (xerox copy).

M-26|24-5-91 : Xerox copy of 2-A petition (xerox copy).

M-27|23-9-97 : Respondent's reply to 2-A petition (xerox copy).

M-28|23-7-93 : Conciliation failure report (xerox copy).

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2142 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार साउथ सैन्ट्रल रेलवे, इलाहाबाद के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-1, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[संख्या एल०-41012/122/95-आई०आर० (बी०-I)]

पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal-I, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of South Central Rly., Secunderabad and their workman, which was received by the Central Government on the 6-8-97.

[L-41012/122/95-IR(B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I

AT HYDERABAD

Present :

Sri V. V. Raghavan, B.A.,LL.B., Industrial Tribunal-I.

Dated : 9th day of July, 1997

INDUSTRIAL DISPUTE NO. 3 OF 1997

BETWEEN

Shri M. Jangaiah S/o Shri Narayana, Nanupatelyon, H. No. 58, Langser Byrex, Rly. Quarters, Secunderabad .. Petitioner

AND

The Chief Personnel Officer, Office of the General Manager (Personnel Branch) South Central Railway, Rail Nilyam, Secunderabad. .. Respondent

Appearances :

M/s. M. Panduranga Rao and M. Rama Rao, Advocates for the Petitioner Respondent set exparte on 25-2-1997.

AWARD

The Govt. of India, Ministry of Labour, New Delhi, referred the following dispute under Section 10(1)(d) and 2A of Industrial Disputes Act, 1947 by its Order No. L-41012/122/95-IR(B-I) dt. 30-12-1996, for adjudication :

"Whether the action of Chief Personnel Officer, S. C. Rly., Secunderabad in terminating the services of Sri M. Jangaiah w.e.f. 22-2-92 without conducting any enquiry is legal and justified ? If not, to what relief the workman is entitled ?"

On receipt of the notice, the workman, hereinafter called the 'Petitioner', appeared and filed his Claim Statement. The Chief Personnel Officer, S. C. Rly., Secunderabad having received the summons did not appear in this Tribunal on 25-2-1997. So he was set exparte. The petitioner filed claim statement contending as follows :

The Petitioner was appointed as Bunglow Peon on 22-9-1992 and he was posted to the house of the Secretary to General Manager, South Central Railway, Secunderabad. His services were terminated with effect from 17-12-1993 by proceedings dated 14-12-93. His signature was taken on two sets of papers, the contents of which are not known to him. He is entitled to retrenchment compensation of Rs. 3,400/- but he was paid only Rs. 2,642/-. His junior Sri Ramesh is continued in service and fresh appointments were also made. A person by name N. Ravinder was appointed. So there was violation of Section 25-F and 25-H of the Industrial Disputes Act, 1947. Hence the petitioner is entitled to reinstatement with back wages.

3. The point for consideration is whether the petitioner is entitled for reinstatement with back wages and all other attendant benefits ?

4. POINT : The petitioner examined himself as W.W.1 and filed Exs. W1 to W6. The evidence and the documents dispose the following facts. Some Railway Officers are given Peons to work at their houses and they were called as Bunglow Peons. Their conditions of service are mentioned in the letter No. P(R)564/RP dt. 15-10-1968 of the General Manager (extracted in Ex. W6 Order of the Central Administrative Tribunal in O.A. No. 814/90 dt. 21-2-91). As per this Circular, the Officers can appoint Bunglow Peons of their choice provided their age should be between 18 and 28 years and medically fit. Their services can be regularised if they work 3 years of service. The services also can be terminated without assigning any reasons. Such arbitrary appointment and termination without giving opportunity to others is deprecated in O.A. No. 814/90 (Ex. W6). It was also held that the Bunglow Peons are workmen, under the I.D. Act provided they work for 240 days. They acquire temporary status as per the rules of Railway Department also.

5. The petitioner was appointed as Bunglow Peon to work in the Bunglow of Secretary to the General Manager by Ex. W1 dated 22-9-92. He was terminated by Ex. W2 order dt. 14-12-1993 with effect from 17-12-1993. He worked for more than 240 days by then. So it was mentioned therein that he is entitled to pay and allowances for one month in lieu of notice and pay for 15 days for each completed year of service. Some amount was paid to the petitioner, as compensation. He says that he was paid only Rs. 2642/-, whereas he is entitled to Rs. 3,400/- and so Section 25F of the I.D. Act, is violated. When a person is retrenched or fresh appointments are made, the retrenched person should be given first offer as per Section 25-H of the I. D. Act. There is no evidence that the petitioner is given such an offer and on the other hand a fresh man was appointed as Bunglow Peon in the Bunglow of the Secretary to the General Manager by Ex. W5 order dt. 6-6-1994. The petitioner also deposed that one Ramesh who was appointed as Bunglow Peon in some other Bunglow and junior to him is continued in service. So the principle of 'lastcome, first go' enunciated in Section 25-G of the I.D. Act, was also not followed.

6. Thus the termination of the services of the petitioner is illegal. An award is passed directing the respondent to reinstate the petitioner into service with continuity of service, back wages and all other attendant benefits. The amount already paid to the petitioner can be adjusted towards back wages.

Dictated to the Seno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 9th day of July, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I Hyd.

Appendix of evidence

Witness examined for

Petitioner

WW1 : M. Jangaiah

Witness examined for

Respondent

NIL

Documents marked for the Petitioner

Ex. W1 : Appointment order dt. 22-9-92 issued to WW1.

Ex. W2 : Termination order dt. 14-12-93 issued to WW1.

Ex. W3 : Copy of the order dt. 5-10-94 in OA No. 1632/93 of Central Administrative Tribunal, Hyderabad.

Ex. W4 : Order dt. 21-6-96 of the High Court in WP No. 8412/96.

Ex. W5 : Appointment order dt. 6-6-94 issued to Sri N. Ravinder as Bunglow Peon.

Ex. W6 : Order dt. 21-2-91 of the Central Administrative Tribunal in OA No. 814/90 of Central Administrative Tribunal, Hyderabad.

Documents marked for the Respondent

NIL

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सदर्न रेलवे, मद्रास 1 के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, तमिलनाडु के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[संख्या एल०-41012/15/93-आई०आर० (बी०य०)/आई०आर० (बी०-I)]

पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2143.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Southern Railway Madras and their workman, which was received by the Central Government on the 6-8-97.

[L-41012/15/93-IR(DU)/IR(B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMILNADU MADRAS

Tuesday, the 29th day of April, 1997

Present :

Thiru S. Thangaraj, B.Sc.,LL.B., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 49 of 1994

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Southern Railway, Madras).

BETWEEN

Shri V. Chellaiah (Khalasi Helper LW),
No. 10, Anthony Pillai Street,
Gandhi Nagar, East Tambaram, Madras-50.
AND
The General Manager,
Southern Railway,
Madras-600 003.

REFERENCE :

Order No. L-41012/15/93-IR(DU)/IR(B-I), Ministry of Labour, dt. 3-6-94, Govt. of India, New Delhi.

This dispute coming on for final hearing on Wednesday, the 9th day of April 1997, upon perusing the Claim, counter statement and all other material papers on record, upon hearing the arguments of Tvl. G. Justin, V. Baredict Vincent and K. Senthilkumar, Advocates appearing for the petitioner-worker and of Thiru M. Munir Sheriff, Addl. Standing Government Counsel, appearing for Management, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

Government of India, vide their Order No. L-41012/15/93-IR(DU)-IR(B-I), Ministry of Labour, dt. 3-6-1994, referred under Section 10(1)(d) of the I.D. Act, 1947 to this Tribunal for adjudication of the following issue :

"Whether the action of the management of Southern Railway, Madras in removing Shri V. Chellaiah, Ex. Khalasi, Helper Locoworks, Perambur, (Token No. 7126) from service w.e.f. 1-10-88 is justified ? If not what relief is the workmen entitled ?"

On services of notices, both the petitioner and respondent appeared before this Tribunal and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows : The petitioner entered into the service in the respondent Southern Railway on 1-5-62 as Gangman on permanent basis and he was subsequently transferred and posted as Khalasi in Loco works in the year 1976. The respondent has issued a charge memo dated 24-2-87 to the petitioner and conducted an enquiry. The enquiry was conducted in gross violation of Railway Service Disciplinary and Appeal Rules. The Enquiry Officer questioned the petitioner and asked him to submit the charges. No witness was examined in the enquiry. No document was also marked on the side of the respondent. When there was no material on record, the Enquiry Officer gave a finding that the charge has been proved The petitioner has applied for leave on two occasions, and on both the occasions, the leave was not sanctioned The petitioner reported sick and took treatment in the Railway hospital. The petitioner had sufficient leave to his credit. The leave applied for by him was not sanctioned. Under the Railway Establishment Code Volume I Rule 524, for the wilful absence of the employees disciplinary action can be taken. The absence of the petitioner was not wilful. He has explained his absence saying that it was due to his illness and he had also sent leave applications. Based on the findings submitted on the basis of the illegal enquiry, the respondent removed the petitioner from service w.e.f. 30-9-88. The Works Manager (C) is not the competent authority and he has no right to remove the petitioner from service. The petitioner was appointed by the Chief Personnel Officer, and the authority equivalent in rank alone can pass the order of removal. The appeal preferred by the petitioner was rejected by the Appellate authority by a non-speaking order. The revision petition filed by the petitioner was also not considered in accordance with discipline and Appeal Rules. The penalty imposed on the petitioner is disproportionate to the alleged misconduct of absence for 55 days. The Tribunal has to invoke Sec. 11A I.D. Act, 1947 and modified the punishment imposed on the petitioner. The order of removal may be set aside and the petitioner be reinstated with continuity of service and back wages.

4. The main averments found in the counter filed by the respondent are as follows : The petitioner B. Chellaiah was originally appointed as temporary Gangman w.e.f. 1-5-62 by the Permanent Way Inspector, Tambaram, subsequently he was transferred as Khalasi to the Loco works (Perambur) at his request. When he was working as Tinsmith, he has been awarded the punishment of reduction as Moulder Metal Carrier in reduced scale of Rs. 210-290. The petitioner was unauthorisedly absent from duty on several days during January 1986 to May 1986, and 1st July to September 1986, and he was awarded the punishment of withholding of increment and privilege pass cut by the competent authority respectively. The petitioner was also reverted as Khalasi helper in the pay scale of Rs. 800-1150 w.e.f 19-6-87 for his absence on various spells during April 1986 to June 1986. Again he absented himself in various spells from 1-10-86 to 6-12-86 and hence the competent authority invoked the provisions of Discipline and Appeal Rules and Charge memo 5 (SFI) was issued to him on 24-2-87. In the enquiry, the petitioner admitted the charges of unauthorised absence from duty and also the consequences of unauthorised absence, under Discipline and Appeal Rules. On the basis of the enquiry findings given by the Enquiry Officer the Disciplinary Authority removed the petitioner from service. The petitioner filed an appeal to the Appellate authority who after consideration confirmed the punishment. The mercy appeal filed by the petitioner was also rejected since it was time barred. The petitioner has given a revision petition and the same was dismissed by confirming the penalty imposed by the Disciplinary authority. The petitioner had voluntarily accepted the charge framed against him in the enquiry. He has also stated that he will defend the case without the defence helper. The petitioner has absented himself unauthorisedly without adhering to the medical attendance rules. The order of removal from service by the Works Manager (C) is legal and he is the competent authority to take appropriate action under Discipline and Appeal Rules whose authority is above the appointing authority, the Permanent Way Inspector, Southern Railway., who initially appointed the petitioner, as Gangman and the appointing authority in Loco Works Manager, while absorption as Khalasi from General Manager, Chief Personnel Officer of Southern Railway is not the appointing authority of the petitioner as he was appointed as Gangman by the Permanent Way Insnector any other higher authority to the permanent Way Insnector has the authority to take appropriate action under Discipline and Appeal Rules. The appellate authority has passed the speaking order and rejected the appeal. The removal order passed by the Works Manager (C), Loco Works is not violative of any Article include Article 311 of the Constitution of India. Hence the Industrial dispute may be dismissed.

5. One witness was examined on the side of the petitioner and Exs. W-1 to W-6 have been marked. No witness was examined on the side of the management and no documents were marked.

6. The only point for our consideration is : Whether the action of the management of Southern Railway, Madras in removing Shri V. Chellaiah, Ex-Khalasi, Helper Loco Works, Perambur (Token No. 7126) from service w.e.f. 1-10-88 is justified. If not to what relief is the said workman entitled to ?

7. The Point : The petitioner Shri V. Chellaiah, was a Khalasi Helper (T. No. 7126) in the Loco Works, Perambur, Madras for his unauthorised absence in various spells from 1-10-86 to 6-12-86, the respondent-management gave a charge memo dated 24-2-87 and on the basis of the said memo, an enquiry was held. Even at the outset, it has to be pointed out that the management neither examined any witness nor marked any documents on their side to prove the charge, the enquiry and other particulars pertaining to the removal of the petitioner. However, the petitioner has marked xerox copies of few documents. He has also not marked the charge framed against him by the Railways. Though he has stated in his index that he has filed charge memo dated 24-2-87, infact it is not a charge memo and it is the order passed by the Works Manager C/LW, Perambur and the same has been marked as Ex. W-1. The enquiry proceedings are very short and the same is marked as Ex. W-2. It seems the enquiry officer has ascertained the name and designation of the petitioner and thereafter asked him whether he was absent from duty during the period shown in the charge memo dated 24-2-87, without sufficient cause or prior sanction and without adhering to leave and medical attendance rules of the railway administration. The petitioner has admitted the charge. However, to the next question whether he was aware of the consequences of the unauthorised absence, his reply was positive. When the Enquiry Officer asked him whether he wanted to say anything regarding his unauthorised absence the petitioner replied,

> "I am a heart patient and also suffering from corns on both feet. Because of these facts I could not lift heavy weight. If I am engaged in lifting or handling heavy weight, immediately I have to face heart attack and heart pain, which makes me to stop away from duty. I therefore, request the CWM/to kindly excuse me for the absence and consider my case and instruct the PF/F to allot me light duty."

The Enquiry Officer, it seems has admitted the plea of admission by the petitioner. There is no document to show whether the enquiry officer has given his finding. The management has also not filed any document to show whether they gave him any notice proposing the punishment to be imposed on him. This becomes relevant in the circumstances of the case when the petitioner has stated that due to heart pain and general weakness he was forced to stay away from duty. Therefore, his absence cannot be taken as wilful. Further he has added that "I will be more careful in future and refrain from absenting hereafter.", kindly excuse me this time." The request made by the petitioner was for mercy to be shown on him. However, the order of removal has not been filed. However, Ex. W-1 the order passed by the Works Manager (C)/LW has been filed and Ex. W2 the order passed on mercy appeal passed by the Chief Works Manager (LW) clearly shows that they have taken technical view of the matter and not considered the real plea put forward by the petitioner. While taking a technical view also they have to consture the real meaning of the charge whether his absence was wilful or not.

8. The learned counsel appearing on the side of the petitioner has drawn my attention to a decision of the CENTRAL ADMINISTRATIVE TRIBUNAL Hyderabad Branch in PRASAD RAO Vs. GENERAL MANAGER, SOUTH CENTRAL RAILWAY SECUNDERABAD & ORS. reported in (1994 2 Administrative Tribunal Judgements P 434). The Administrative Tribunal held that under Sub-para (1) and Sub-para (2) of para 518 of the Indian Railway Establishment Code Vol. I Fifty Edition 1985, would show that if a railway servant absents himself without due sanction of leave, he would not be entitled to leave salary for that period and if such absence is wilful he would expose himself to disciplinary proceedings under the Rules. If a railway servant wilfully absents himself he is liable for disciplinary action. In case due to his illness or due to some other reason which was beyond his control, he had absented himself from duty, then he is not liable for disciplinary action The reported case is also a case of Khalasi like the petitioner who had absented from duty and explained his absence by saying that he was ill during that period The petitioner herein has also given the same reason for his absence during the period. As already stated, the charge has not been produced before this Tribunal to show that the management has framed the same for the wilful absence of the petitioner. The explanation given by the petitioner before the Enquiry Officer reveals that due to heart pain and general weakness he was unable to attend duty during that period and further he had pleaded for mercy. Therefore, he had explained his inability to attend duty by saying that he was unwell during that period. In such circumstances, his absence can not be taken as wilful and so the charge framed against him will not satisfy Sub-para 1 and 2 of Para 518 of the Indian Railway Establishment Code (Volume-I) Fifth Edition, 1985. The view taken by the Administrative Tribunal, Hyderabad Bench is applicable to this case also.

9. The next contention of the petitioner is that he had served in the department since 1-5-62 and the punishment imposed on him is disproportionate to the charge of absence levelled against him, and the question can be considered under Sec. 11A of the I.D. Act. The absence of the petitioner was taken as unauthorised by the management. In fact the petitioner explained it by saying that due to his illness he was unable to attend duty during that period. The petitioner has joined service on 1-5-62 and at the time of his absence in the year 1986, he had put in 24 years of service and due to illness he could not attend duty. When he had shown a reasonable cause for his absence the punishment of removal from service is disproportionate, to the charge framed agaist him. The Tribunal has got sufficient power to modify the punishment in case the punishment was not justifiable. In the instant case, the punishment can be modified. However, the reasons stated above would go to show that the petitioner had absented himself due to his illness which was reason beyond his control. Therefore, considering the number of years of service, the age and the health condition of the petitioner and also that no proper charge has been made out against the petitioner for his removal from service, the petitioner is entitled for reinstatement, with continuity of service, backwages and all other benefits.

In the result, award passed for reinstatement of the petitioner with continuity of service, backwages and all other attendout benefits. No costs.

Dated, this the 29th day of April 1997.

Industrial Tribunal.

WITNESSES EXAMINED

For Workmen:

W.W. 1 : Thiru V. Chellaiah.

For Management : None.

DOCUMENTS MARKED

For Workmen:

Ex. W-1/24-2-87 : Charge memo issued to petitioner (xerox copy).

W-2/19-4-88/26-5-88 : Enquiry proceedings (xerox copy).

Ex. W-4|10-10-88 : Mercy appeal by petitioner to Deputy Chief Mechanical Engineer (Xerox copy).

W-5|25-7-89 : —do— Chief Works Manager (Xerox copy).

(Xerox copy)

W-6|2-3-90 : Review petition to Chief Workshop Engineer.

For Management : Nil.

नई दिल्ली, 8 अगस्त, 1997

का.आ. 2144-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. रेलवे, सिकन्दराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, I हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[संख्या एल-41012/103/94-आईआर (बी-I)]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, I, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.C. Rly. Secunderabad and their workman, which was received by the Central Government on 6-8-97.

[L-41012|103|94-IR(B-I)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Dated : 15th day of July, 1997

Industrial Dispute No. 84 of 1995

BETWEEN

Shri Ellappa, S/o. Shri Thippanna, Ex. Rly. Hamal, Tandur New Market, Tandur-501141, R. R. District, A. P. .. Petitioner.

AND

The Sr. Divl. Commercial Superintendent, Secunderabad (BG) S. C. Rly., 2nd Floor, Sanchalan Bhavan, Secunderabad. .. Respondent.

APPEARANCES :

M|s. B. N. Sharma and M. C. Jacob, Advocates for the Petitioner.

Sri A. K. Jayaprakash Rao, Advocate for the Respondent.

AWARD

The Govt. of India, Ministry of Labour, New Delhi, referred the following Industrial Dispute by its Order No. L-41012|103|94-IR(B.I.) dt. 7-8-1995 under Section 10(1)(d) and 2A of Industrial Disputes Act, 1947 for adjudication :—

"Whether the Railway Administration is justified in terminating the services of Shri Ellappa without assigning any reasons? If not, to what relief the workman in dispute is entitled for ?"

Both the parties appeared and filed their pleadings.

2. The workman filed a claim statement contending as follows : The petitioner-workman was a hamali working at Tandur Railway Station in Secunderabad (BG) Division of South Central Railway. He was engaged in loading and unloading of parcels and other materials in and from the trains. He should be available in the platform when loading and unloading work has to be done. He has to unload the parcels from the train and carry them to parcel office. He is paid as per the weight. The Station Superintendent of Tandur Railway Station will prepare a monthly statement as per the weight loaded and unloaded by the petitioner and other hamalies and submit the same to the Sr. Divl. Commercial Superintendent, Secunderabad, who in turn will send a Pay Order to the Station Superintendent to pay the amount to the petitioner and other hamalies. The Labour Enforcement Officer visited Tandur Railway Station on 14-11-1991 and found that the petitioner and other hamalies are not paid minimum wages and sent a letter to the Station Superintendent, Tandur Rly. Station and Sr. Divl. Commercial Superintendent Secunderabad to pay the minimum wages to the petitioner and other hamalies. The Sr. Divl. Commercial Superintendent (Respondent herein) instructed the Station Superintendent of Tandur Railway Station to give a complaint to the Government Railway Police and also the Railway Protection Force to the effect that unauthorised persons are handling parcels|luggage booked at the station and they should be prevented from doing so. Accordingly the Station Superintendent lodged a complaint on 24-4-1992 and since then the petitioner and other hamalies were not permitted to enter into the Railway Station to perform their duties which is illegal and violative of provisions of I.D. Act. The petitioner-workman was working as a Hamali for the last 20 years. No reason is given for terminating his services. The respondent refused to reinstate the petitioner before the Conciliation Officer. So this reference is made. On a complaint given by the Labour Enforcement Officer to the Regional Labour Commissioner, Central, the authority under the Minimum Wages Act, passed an

Award dt. 14-8-1993 in Application No. 18|93 and directed the respondent to pay minimum wages to the petitioner and other hamalies. Then the respondent moved the matter before the Hon'ble High Court which is pending. The respondent may be directed to reinstate the petitioner with full back wages and other consequential benefits.

3. The respondent filed a counter contending as following : The petitioner was not appointed by the Respondent. The petitioner's name does not find a place in the Attendance Register or any other registers of the Respondent. So he is not an employee of the respondent. Under the provisions of 2302 of IRCM Volume-II the Station Master is entitled to engage Hamalies. Accordingly, the Station Master at Tandur engaged the petitioner and other Hamalies as Sowcar Hamalies for loading and unloading and for early clearance of the parcels when there is heavy work. The Bill is to be submitted by the Hamalies. Then Station Master submits the Bill, the respondent issues pay orders. The hamalies are paid at the rate of Rs. 18 for 100 quintals towards hamali charges for handling the packages. The petitioner approached the Regional Labour Commissioner claiming minimum wages and also for the designation. There is no evidence that the petitioner is working since 20 years. He is not entitled for minimum wages as the Tandur Railway Station is not notified as Scheduled Employment, in notification dt. 9-12-89. Hence the petitioner is not entitled to any relief.

4. The workman examined himself as W.W.1 and filed Exs. W1 to W3. The Chief Commercial Inspector of Tandur Railway Station is examined as M.W. 1 and he filed Exs. M1 to M4.

5. The points for consideration are :

(1) Whether the petitioner is a workman within the meaning of I.D. Act ?

(2) To what relief ?

6. Point No. 1.—The admitted or proved facts are as follows : There are 3 Parcel Porters appointed on regular basis on monthly wages in Tandur Railway Station. They work in shifts. Their duty is to carry the parcels from the Parcel Office of the Railway Station and load them into a Compartment of passenger train called S.L.R. for transport. They are also to unload the parcels from the S.L.R. and carry them to the Parcel Office for delivery to the consigness. All these parcels are carried in a Passenger Train. The loading and unloading of the parcels etc., into Goods Train at Tandur Railway Station was stopped about 7 years back. The Passenger Trains stop for two minutes only at Tandur. In these two minutes, a single regular parcel porter is unable to load the parcels for being carried to other places and unload the parcles that are to be delivered to the consignees at Tandur Rly. Station. The Railway Administration by Rule 2302 IRCM Vol. II permitted the Station Masters to engage Hamalies to assist the regular Parcel Porters for this purpose. These Hamalies engaged by the Station Master locally are called as "Sowcar Hamalies." These Hamalies are paid at a fixed rate on the quantity of parcels carried by them. They were paid at the rate of Rs. 18 per 100 quintals from October, 1986 and Rs. 22 per 100 quintals from 1-5-1993 as per the evidence of M.W.1.

7. The Petitioner (Ellappa) and two others have been acting as Sowcar Hamalies since more than 20 years. M.W.1 the Chief Commercial Inspector who has been working at Tandur Railway Station since October, 1996, admitted that these persons have been working as Sowkar Hamalies. M.W.1 stated that the charges are paid to one Sowcar hamali and he distributes the same among the other sowcar hamalies, as can be seen from Ex. M1 Sowcar Hamali Bill for January, 1991, which is passed by the Commercial Office at Secunderabad and sent to the station Master for payment Ex. M3 is a Xerox copy of pay order given to Sowcar Hamalies by the Commercial Manager, Secunderabad.

8. While so the Labour Enforcement Officer visited on 14-11-91 the Tandur Railway Station on 14-11-91 and found that the petitioner and other Sowcar Hamalies are not paid minimum wages. He sent a report to the Station Superintendent and Sr. Divel. Commercial Superintendent, Secunderabad instructing them to pay the minimum wages. They have not paid the minimum wages to the Hamalies, as per Ex. M2 the Government of India Notification. The Labour Enforcement Officer filed a case before the Regional Labour Commissioner (Central) for a direction for payment of minimum wages to the petitioner and other Sowcar hamalies. The petitioner avers and deposes that to avoid payment of minimum wages to the petitioner and other sowkar hamalies, the Station Superintendent sent the original Ex. W3 letter dt. 24-4-92 to the Acting C.S.R|Tandur complaining that the unauthorised persons are attending the SLR compartment for handling the parcels| luggage and that those persons are demanding more money from the public who have come to the station for booking parcels or luggage for loading and also from the Public taking away the packages from Station after taking delivery from booking office. Thereby the Railway Protection Force and Govt. Railway Police prevented the petitioner and other Sowcar Hahamlies form entering into the Station The petitioner pleads that to avoid the payment of wages, they are prevented from entering into Station and it amounts to termination of service.

9. M.W.1 deposed that there is no relationship of employer and workmen between the Indian Railway and Petitioner.

10. The main point to be decided in this dispute is whether these Sowkar hamalies are the workmen within the meaning of I.D. Act. These Sowkar hamalies are not given any appointment order. They are not given Scales of Pay and their attendance is not marked. There are no fixed hours of work for them. They are paid for the total weight of the parcels carried by them in a particular month the rate being fixed from time to time by the Railway Administration. They have to be present as and when a passenger train reaches the Railway Station.

They have to load the parcels booked in Tandur Railway Station and unload the parcels from the Train for being delivered to the customers at Tandur Railway Station. The petitioner pleads that he is a workman of the Railways, whereas the respondent pleads that the petitioner is not their workman.

11. The learned counsel for the petitioner cited number of decisions in Support of his contention. In Dharangadhra Chemical Works Ltd., Appellant vs. State of Saurashtra and others Respondents (AIR 1957 S.C. 264) the Agarias working in the Salt Works are professional labourers and they themselves personally work alongwith the members of their families in the production of salt in the land of the Company. The Company pays them at a particular rate for the salt prepared. They are held to be the workmen under the I.D. Act by the Supreme Court. In M|s. Radhakrishna Umbrella Factory Alleppey and others, Petitioners vs. Industrial Tribunal Alleppey and others (1971 LAB. IC. 811) the Kerala High Court held that the Hamalies who unload the goods from the lorries and store them in the godowns of the whole sale dealers are held to be workmen though there are no working hours for them and though they are paid for the load handled by them. The Kerala High Court took the same view in Calicut Moridum SPG. and X WVG. Mills Ltd. Chelambra, Appellant vs. Industrial Tribunal, Calicut and another Respondent (1977 LAB. IC. 1673). The Supreme Court held that the contract workers are also workmen in Hussainbhai Petitioner vsfl The Alath Factory Tezhilali Union and others (AIR 1978 SC 1410). The learned Judge Hon'ble Sri Justice V. R. Krishna Iyer held as follows in para 5 of the Judgement.

> "The true test may, with brevity, be indicated once again where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employers. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reasons, chokes off, the workers is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped indifferent perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myraid devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Arts. 38, 39, 42, 43 and 43-A of the Constitution. The court must, be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."

The Madras High Court held in The Management of Tractors and farm Equipment Ltd., Petitioners vs. The Presiding Officer, Ist Addl. Labour Court and T. A. Doss, Respondents (1983 Lab. IC. 460) that the workers engaged regularly for loading the tractors in the Railway Wagons are the workmen. The Supreme Court held in M|s. Srining Tailors, Appellant vs. Industrial Tribunal II, U. P. Lucknow and others Respondents (1983 LAB. IC. 1509) that Tailors working on piece rate basis in a big tailoring establishment, are workmen.

12. The respondent did not cite any decision to prove that the petitioner is not a workman.

13. In view of the fact that the petitioner and two other workers have been continuously working in the Railway Station since 20 years and they are being paid a particular rate as Wage it has to be held that the petitioner is a workman within the meaning of I.D. Act.

14. Point No. 2.—In view of my finding on Point No. 1, the petitioner is entitled to be reinstated as Sowkar Hamali with the same service conditions as are obtained on 24-4-1992. He is entitled to wages at the rate fixed by the Railway Administration for the Sowkar Hamalies from time to time from the date of reinstatement. They should be reinstated within one month after publication of Award. Otherwise they are entitled to average wages they have been earning earlier per month, from one month after publication of Award. The above direction with regard to the payment of wages is subject to the final decision of the Hon'ble High Court in the case under the payment of Wages Act initiated by the Labour Enforcement Officer.

An Award is passed accordingly.

Dictated to the Steno-typist, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal this the 15th day of July, 1997.

V. V. RAGHAVAN, Industrial Tribunal-I

Appendix of evidence

Witness examined for Petitioner :

Witnesses examined for Respondent :

WW1—Ellappa

MW1—J. D. Gabrial.

Documents marked for the Petitioner

Ex. W1 : Receipt for the Hamali charges (xerox copy).

Ex. W2—Xerox copy of order dt. 14-8-93 of Regl. Labour Commissioner (Central) at Hyderabad.

Ex. W3—Xerox copy of letter dt. 24-4-92 of Station Superintendent Tandur to acting Commercial Supervisor, Tandur.

Documents marked for the Respondent

Ex. M1—Xerox copy of Sowkar Hamali Bill for January, 1991.

Ex. M2—Xerox copy of notification dt. 7-12-89 issued by Govt. of India regarding minimum wages.

Ex. M3—Xerox copy of Pay Order given to Sowkar Hamali.

Ex. M4—Xerox copy of Circular dt. 28-4-93 regarding charges payable to the Sowkar Hamalies.

V. V. RAGHAVAN, Industrial Tribunal-I, HYD.

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2145 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार करुर वैश्य बैंक लिमि०, करुर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, तमिलनाडु, मद्रास-1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[संख्या एल०-1201117/86-डीव०-ए०/डी०आई०बी०]

पी०जे० माईकल डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Tamil Nadu, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Karur Vysya Bank Ltd. and their workman, which was received by the Central Government on 6-8-97.

[L-1201117/86. Div. A/D.I.B.]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU MADRAS

Monday, the 5th day of May, 1997

PRESENT :

Thiru S. Thangaraj, B.Sc I.L.B., Industrial Tribunal

Industrial Dispute No. 58 of 1989

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947, between the Workmen and the Management of Karur Vysaya Bank, Karur).

BETWEEN :

The workmen represented by :

The General Secretary,
Karur Vysya Bank Employees Union,
Avenue Road, Bangalore.

AND

The Chairman,
Karur Vysya Bank Ltd.,
Karur.

REFERENCE :

Order No. L-1201117/86.D.IV.A/D.I.B., Ministry of Labour, dated 16-6-89/14-6-89, Govt. of India, New Delhi.

This dispute coming on for final hearing on Thursday, the 10th day of April 1997, upon perusing the Claim, Counter statements and all other material papers on record, and upon hearing the arguments of Tvl. K. Chandru and D. Nagasilan, Advocate appearing for the Petitioner-union and of Tvl. T. S. Gopalan, P. Ibrahim Kalifulla, S. Ravindranand N. C. Srinivasavaradhan, Advocates appearing for the respondent management, and this dispute having stood over till this day for consideration, this Tribunal made the following.

AWARD

Government of India, vide their Order No. L-1201117/86-Div.A/D.I.B. Ministry of Labour, dated 14/16-6-98, have referred to this Tribunal under Section 10(1)(d) of the ID Act, 1947 for adjudication of the following issue :—

> "Whether the action of the management of Karur Vysya Bank Ltd., in paying bonus to it's employees at the rate of 8.33% and not at the rate of 10.07 is justified and legal in view of the provisions of Section 24 of Payment of Bonus Act, 1965 and Section 34A of Banking Companies Act ? If not to what relief the workmen are entitled ?"

2. On services of notices, both the petitioner and the respondent appeared before this Tribunal and filed their claim and counter statements respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows :

For the accounting year 1981, the respondent has declared bonus at the rate of 8.33⅓ the minimum prescribed under Payment of Bonus Act. The petitioner-union by it's letter dated 22-6-1992 demanded for payment of 15% bonus. From the worksheet filed by the respondent bank for the year ending 31-12-81, the reserve fund has been increased by Rs. 25,20,265.78 in 1980. The other reserves was shown at Rs. 14,633376 but whereas it was shown at Rs. 29,54,122 for the year 1981. Thus an shown at Rs. 14,633,76 but whereas it was shown cess amount shown as "Other Reserves" can only be the profit accumulated for the accounting year 1981. The statutory reserve in the Balance Sheet is Rs. 6,93,000. Therefore, the amount of Rs. 7,97,786 representing "Other Reserves" as shown in the balance sheet is not taken into account to arrive at the gross profit to compute the bonus payable for the year 1981. If this amount is taken into consideration, the total

amount available as allocable surplus is Rs. 12,74,000, and the workman can able to get bonus at the rate of 15%. In these circumstances, after adding back the amount shown as "Other Reserves" into gross profit, award may be passed for the bonus for the year 1981.

4. The main averment, found in the counter filed by the respondent are as follows :

As per Section 34(A)(1) and 34(A)(2) of the Banking Regulations Act, 1949 and Item 3(e) of the First Schedule to the Payment of Bonus Act, 1968, any reserves not shown in the balance sheet and the particulars not shown therein in respect of the provisions made for bad and doubtful debts need not be shown. The Reserve Bank shall furnish to the authority concerned a certificate stating that the authority shall not take into account any amount such reserves and provisions of the banking company and a certificate of the Reserve Bank of India on such question shall be final. Any amount certified by Reserve Bank of India in terms of Sub. Sec. 2 of Sec. 34(A) of the Banking Regulation Act, 1949 cannot be added. The claim of the petitioner union is Regulation Act, 1949. Even if the amount claimed by the union is added to the gross profit the same would not make any hange in the quantum of allocable surplus having regard to the amount of "Set-off" of the previous accounting year. During the Conciliation proceedings, the Reserve Bank of India issued a certificate on 1-6-1985 that no part of the amount as reserves and provisions referred to in sub-section (i) of Sec. 34A(1), of the said Act shall be taken into account for the purpose of Payment of Bonus Act. By a certificate dated 12-12-1974 Reserve Bank of India advised all commercial banks to make reasonable adhoc provision in respect of outstanding advances in addition to making provision for such advances as may be identified as "bad and doubtful recovery" in the usual manner. In such circumstances, the claim of the petitioner-union for additional bonus is not justified.

5. Exs. W-1 and W-2 have been marked on the side of the petitioner-union. Exs. M.1 to M.8 have been marked on the side of the respondent. No witness has been examined on both sides.

6. The only point for our consideration is : Whether the action of the management of Karur Vysya Bank Ltd., in paying bonus to it's employees at the rate of 8.33% and not at the rate of 10.07 is justified and legal, in view of provisions of Section 24 of Payment of Bonus Act 1965 and Sec 34A of Banking Companies Act. If not to what relief the workmen are entitled.

6 The Point : The respondent Karur Vysya Bank Ltd., has paid 8.33% bonus for the year 1981. The petitioner-union not satisfied with the bonus of 8.33% claimed 10.07% bonus from the respondent-bank that when the bank refused to pay, the petitioner-union raised this Industrial disponte and on that basis the reference has been made by the Government of India. The parties have restricted their case on two grounds. The first argument was that as per Profit and Loss Account of the respondent-bank for the financial and ended on 31-12-1981, the bank has got a net profit of Rs. 22,24,336.78 and out of the said amount Rs. 10,25,000 was transferred to the statutory reserve and Rs. 6,98,000 transferred to 'other reserves'. However, the balance sheet on 31-12-1981 shows "Other Reserves" at Rs. 29,54,122.45 as again t Rs. 14,63,386 as on 31-12-80. Thus there was an increase of Rs. 14,90,746.45 whereas the transfer from Profit and Loss Account was only Rs. 7,97,746. The difference shown in the "Other Reserves" should be added to the amount already available for payment of bonus and if added the employee will get 10.07% bonus as claimed by the petitioner-union is the main contention put forward by the union. The respondent-bank has contended that the sum of Rs. 7,97,746 directly take to the Balance sheet under the item "Other Reserves" cannot be added to the gross profit as claimed by the petitioner-union in view of Sec. 34(A)(2) of Banking Regulation Act, 1949. Under Sec. 34(A)(2)(1) the bank cannot be compelled to furnish information relating to any reserves or provisions for bad or doubtful debts not shown as such in the Balance sheet. However, if the Reserve Bank of India certifies under Sec. 34(A)(2) of the said Act no amount of reserve or provision should be taken into account. It is the main case of the respondent-bank that when the matter was pending concilation before the Conciliation Officer who wrote clarification in the Reserve Bank of India and in turn the Reserve Bank of India has sent Ex. M.4 and M.5 certificates saying that no reserve or provision was available during the said year to be added not profit for payment of bonus. By showing the certificate Exs. M.4 and M.5 given by the Reserve Bank of India, the respondent management has argued that the claim of the petitioner will no lie. However, the petitioner union has shown he provision under Section 34(A) of the Banking Regulation Act that

(a) Any reserves not shown as such in the published Balance sheet to,

(b) Any particulars not shown therein in respect of provisions made for bad and other usual necessary provisions.

would go to show that the respondent bank cannot rely on the said provisions. It was further contended on the side of the petitioner-union that the reserves in question is not a secret reserves and it is shown in the balance sheet cannot be taken as "a reserve not shown as such in the balance sheet", and therefore the argument of the respondent is misconceived. Further, it was contended by the petitioner-union that Sec.(A)(1) relates to such information which can be obtained by a bank and not such information if obtained from the published balance sheet can be used in the proceedings. Therefore, the petitioner-union contended that as the amount shown in the other reserves" has already been shown in the balance sheet, the respondent cannot make use of the certificates Exs. M.4 and M.5 issued by the Reserve Bank of India in the instant case. It was further argued on the side of the petitioner-union that Sec. 34(A)(2) of the Banking Regulations Act provides mechanism to determine the amount of the

secret reserves or provisions be taken into account without the banking company divulging confidential information, and the said provision came into play in respect of the amounts which are not disclosed in the balance sheet, whereas in the instant case, as the amount has been published the certificate issued by the Reserve Bank of India has no relevance.

7. It has further argued on the side of the petitioner-union that First Schedule of the Payment of Bonus Act, 1965 is applicable to the banking companies and item No. 3(e) says :

> "Any amount certified by the Reserve Bank of India in terms of sub-section (2) of Section 34-A of the Banking Regulation Act, 1949 (10 of 1949)".

Item 4 says;

> Add also income, profits or gains (if any) credited directly to published or disclosed reserves, other than".

From Section 3(e) it is clear that secret reserves or provisions have to be added back on the basis of the certificate issued by the Reserve Bank of India. In the present case, as the amount shown in the "Other Reserves" has already been published it is not a secret reserve and therefore the certificate issued by the Reserve Bank of India has no relevance. It was also contended on the side of the petitioner-union that the certificate issued by the Reserve Bank of India is not relevant to the accretion to the "other reserves" in question comes under Item (4) of the First Schedule. The respondent has contended that as Reserve Bank of India has issued a certificate that no portion of the reserve shall be added to the gross profit the arguments advanced on the side of the petitioner-union will not attract our consideration. However, while considering the pleas raised by the parties for and against the adding of "Other Reserve" to the net profit, the reasons assigned by the petitioner-union attract our consideration and as the amount shown in "Other Reserves" which is the main question to be decided herein has already been published it was not a secret reserve "not shown as such in its published balance sheet" and therefore, the certificate issued by the Reserve Bank of India has no relevance. Therefore, the sum of 7,97,746 has to be added with the gross profit for the purpose of payment of bonus to employees.

8. The second argument advanced on the side of the respondent bank was not on the basis of any provision of law but on arithamatic calculations to find out the amount available for payment of bonus on the basis of the said Act. In fact the petitioner-union has not challenged the arithamatical calculations shown by the respondent-bank. The bank has already paid the minimum bonus of 8.33% as contemplated under the Payment of Bonus Act. When the petitioner-union has demanded the Payment of 10.07% bonus. The respondent bank has put forward the calculations to show that there was no gross profit to pay any bonus over the above 8.33%. The respondent bank has given the following calculations :

Gross Profit for the accounting year		35,36,000
Amount to be added to the Gross profit as claimed by the union		7,93,000
Total :		43,29,000
Sums to be deducted from the gross profits :—		
Depreciation		6,06,000
		37,23,000
LESS :		
Further sums as are specified under the Third Schedule to the Act.		16,04,000
Available surplus for the accounting year		21,19,000
Allocable surplus—60% of the available surplus (60% of 21,19,000)		12,71,000
Less Set off amount of the three preceding years.		
1978 (3)	2,31,000	
1979 (4)	2,83,000	
1980 (5)	99,000	
Balance		6,58,000

As already a sum of Rs. 7,10,000 has been paid to the employees towards minimum bonus of 8.33% there is no surplus amount to pay bonus more and above 8.33% or as claimed by the petitioner-union at 10.07%. In fact the petiitioner-union has not shown any valid reasons to disbelieve the said calculation shown by the respondent management. As the calculation shown by the respondent-bank is as per the provisions of the Payment of Bonus Act, the same can be accepted. When once the respondent bank has paid more and above Rs. 6,58,000 towards minimum bonus for the year, there is no question of making any further bonus for the said year. For these reasons, the claim of the petitioner-union cannot be accepted. Therefore, award has to be passed dismissing the claim.

In the result, award passed dismissing the claim of the petitioner. No costs.

Dated, this the 5th day of May, 1997.

Industrial Tribunal.

WITNESSES EXAMINED

For Management: Thiru A. S. Vasudevan

For Petitioner . None.

DOCUMENTS MARKED

For Workmen :

Ex. W-1/15-10-59 : Circular from the Reserve Bank of India to the respondent (xerox copy).

Ex W-2/23-11-83 : Letter from the respondent to the Regional Labour Commissioner Madras (xerox copy)

For Management :

Ex. M-1/ : Printed Balance sheet for the year 1981.

Ex. M-2/12-12-74 : Circular of Reserve Bank of India. (xerox copy)

Ex. M-3/28-8-86 : Letter from Asst. Labour Commissioner enclosing the certificate issued by the Reserve Bank of India (xerox copy)

Ex. M-4/ : Letter from Reserve Bank of India enclosing Certificate u/s. 34(A)(2) of Banking Regulations Act, 1949 (xerox copy)

Ex. M-5/ : Copy of Letter No. FDL. 676/C dt. 1-6-85, addressed to the Asst. Labour Commissioner. (C). Madras (xerox copy)

Ex. M-6/ : Worksheet as per the First Schedule of payment of Bonus Act—

Computation of gross profit for the accounting year ending 1981 (xerox copy)

Ex. M-7/3-5-83/21-6-83 : Letter from Union to the Regional Labour Commissioner (Central). Madras.

Ex. M-8/22-7-83 : Reply from Management of Regional Labour Commissioner(C) PAD/2397/83.

नई दिल्ली, 8 अगस्त, 1997

का०आ० 2146:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस०बी० आई० नई दिल्ली 1 के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली 1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-8-97 को प्राप्त हुआ था।

[संख्या एल०-12012/121/92-आई०आर० (बी०-3)]

पी०जे० नाईक, डैस्क अधिकारी

New Delhi, the 8th August, 1997

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.B.I., New Delhi and their workman, which was received by the Central Government on 6-8-97.

[L-12012/121/92-I.R.(B. 3)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 107/92

In the matter of dispute :

BETWEEN

Shri Khem Chand through Shri H. K. Pathak,
240 Lawyers Chamber,
Western Wing,
Tis Hazari,
Delhi.

Versus

The Branch Manager,
State Bank of India,
B9/10, Community Centre,
Janak Puri,
New Delhi.
Pin. 110058.

APPEARANCES :

Workman in person.

Shri A. K. Gupta for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/121/92-I.R. (B-3) dated 4/7-12-92 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether Shri Khem Chand, Canteen Boy, is a workman of State Bank of India ? If so, whether the action of the management of State Bank of India in terminating his services w.e.f. 3-1-91 was justified ? If not, to what relief Shri Khem Chand is entitled to ?"

2. The workman in his statement of claim has alleged that he joined the services of the management in March, 1975 at Janak Puri Branch. He was discharging the duties of serving tea, preparation of tea, serving water, filling the water coolers

and to shift ledger books from one place to another as per directions of the staff members/officers of the bank. He was under the discipline and control of the management, and he used to attend the duties regularly at 10 A.M. to 5 P.M. The discipline of the subordinate staff was applicable to the workman also. He had been demanding proper pay scale from the bank but was being put off by the management and did not pay the same on one excuse or the other. He raised his dispute to the Assistant Labour Commissioner which were later on withdrawn by him. The bank staff got irritated from him because he had refused to comply with their illegal demands and his insistance for his regular pay scale. He had filed an application under section 20(2) of thee minimum wages Act before the authorities concerned on 10-10-90 and his services were terminated on 3-1-91 without any ground or reason. He was being paid a salary of Rs. 300 P.M. from the bank management but no appointment letter was issued to him. The Management after his termination appointed a new hand in his place which was illegal and unjustified. The management refused to accept him an employee of the bank though the Identity Card had been issued by the branch manager to him. He was not employed by the Local Implementation Committee as there was no such body. Hence this reference for adjudication that he was entitled for reinstatement with full back wages and for quashing the order of his termination passed by the management.

3. The Management in its written statement alleged that there was no relationship of employer and employee between the workman and the management. He was never employed by the management and was selected by the Local Implementmation Committee as a Canteen Boy who used to serve tea to the bank staff on reasonable rates. He was not under the supervision and control of the management but was answerable to the Local Implementation Committee. The management denied having paid Rs. 300 as salary and has also alleged that the workman was never under the control and supervision of the management.

4. The Management examined Shri S. P. Jain, Chief Manager, MW1 while the workman himself appeared as MW1, and also filed affidavit Ex. WW1/1.

5. I have heard representatives for the parties and have gone through their written arguments as well.

6. The Management representative has argued that the workman was never employed by the bank and was employed by the Local Implementation Committee to work as a Canteen Boy. A canteen was not run by the bank but was being controlled and managed by the Local Implementation Committee. The Staff of the Canteen was not staff of the Management. He also reiterated what was alleged in the written statement. He has also referred to a judgment of the Hon'ble Supreme Court in which it was held that the workers in the Canteen run by the Local Implementation Committees in the Reserve Bank of India could not be said to the employees of the R.B.I.

7. Representative for the workman on the other hand had urged that the following functions used to be performed by the workmen :

"1. Preparing tea, and serving the same to the employees of the Branch.

2. Bringing and storing of water and also serving the same to the employees.

3. Filling water in the coolers.

4. Moving ledger books from one table to another.

5. Moving the documents and account books, as directed by the Staff and Officers.

6. Doing the duties of Peon; as per the directions of the officers and employees of the Branch, Janakpuri."

He has further urged that the Branch Manager was Chairman of the Local Implementation Committee, the Bank had issued the I. Card to the workman and the wages of the workman were paid by the bank according to circular dated 19-10-90. The bank used to make the funds available with the Local Implementation Committee which was nothing but a body created by the bank to circumvent law for avoiding legal liabilities. It was an unfair labour practice as the bank had provided all the infrastracture required for running the canteen. In addition to his working in the canteen he used to work in the branch of the bank also as subordinate staff member.

8. After having gone through the points urged before me by the representative for both the parties, I am of the view that the workman in this case was not an employee of the management. He has himself admitted that he was being paid Rs. 300 P.M. and he worked in the canteen from 1975 to 1991 without any appointment letter and also without any regular scale of post. In AIR 1996 Lab. I.C. 1048 it was held as follows :—

"Held, in the absence of any obligation statutory or otherwise regarding the running of a canteen by the Bank and in the absence of any effective or direct control in the Bank to supervise and control the work done by various persons, the workers in the canteen run by the Implementation Committee (Canteen Committee) cannot be said to be an employee of the R.B.I."

The employment in the State Bank of India is made through a well established recruitment system by observing rules as to age, qualification, etc. The applicant was never recruited through its recruitment system and the Branch Manager of State Bank of India has no authority to appoint any person. This fact is supported by the admission of the claimant in cross-examination when he appeared as his own witness. In his cross-examination he has stated and admitted that he was appeared by one Mrs. Kapur who was office bearer of the Union further states that she called him and got the job for hi mand he was asked to work in the canteen. He has further stated in the cross-examination that the Union people used to get his signatures. From this, it is clear that Shri Khem Chand was never appointed in the Bank through any recruitment system and actually he was appointed by the Local Implementation Committee of which Union Office bearers are the members and he was asked to work in canteen. He has admitted in his cross-examination that he was serving tea to the staff and he used to be paid through cheques and the amount under the cheque was used to be kept by him every month. In his cross-examination, he has clearly admitted that he was working as a canteen boy under the Local Implementation Committee and was not the employee of the Bank. Even if for the sake of arguments, it is presumed that he was engaged by the Branch Manager in the Bank, even then he was no right to be absorbed permanently in the Bank because he was never appointed according to rules through a recruitment system of the Bank. It has been held by the Supreme Court of India in the case reported in AIR 1986 page 1565 that it is a settled law that person appointed without observing recruitment rules cannot be absorbed permanently. In the present case, the applicant was not even recruited in the Bank, so the question of permanent absorption in the Bank does not arise.

That the applicant was engaged by the Local Implementation Committee is amply clear from the evidence produced on the file and in the cross-examination of the applicant himself. He has admitted that he was working in the canteen, he was appointed by the office bearers of the Union and he used to be paid through cheques. He never marked his attendance in the attendance register alongwith other employees of the Bank, etc. The Bank's witness also as fully supported the Bank's case. In the cross-examination also, the Bank's witness has clearly stated that Shri Khem Chand was working under the Local Implementation Committee. The photo copies of the cheques paid to Shri Khem Chand also clearly established that he was paid by the Local Implementation Committee of the Bank and no salary, etc. was ever paid to him by the Bank.

That the Local Implementation Committees in Banks are constituted at branch level as a staff welfare scheme to serve tea, snacks, etc. to the staff. The running of a canteen at branch is not an obligation under any statue of the Bank. This is clearly evident from the Bank's circular dated 19-10-90 produced on the file. The other documents produced by the Bank may also be referred in this regard. The Branch Manager is ex-officio the chairman of the committee alongwith office bearers of the union or members of staff who are members. The Bank has no supervisory control over this committee or manner of running the Canteen.

So, from the above facts, it is clear that Shri Khem Chand was not the employee of the Bank. He was engaged by the Local Implementation Committee to serve tea, etc. There was no legal obligation upon the Bank to run a Canteen in the branch statutorily or otherwise, hence Shri Khem Chand engaged by the Local Implementation Committee is not employee of the Bank and he has no claim against the Bank. Accordingly, he has no right to be absorbed in the Bank.

9. In view of the above situation, I am of the opinion that there was nothing wrong in the action of the Management as the workman was not their employee. However, parties are left to bear their own costs.

1st August, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 10 अगस्त, 1997

का०आ० 1147.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस०बी०बी०जे०, जयपुर 1 के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अजमेर (राज०) के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-97 को प्राप्त हुआ था।

[संख्या एल०-12012/06/96-आई०आर० (बी०-I)]

पी०जे० माईकल, डैस्क अधिकारी

New Delhi, the 10th August, 1997

S.O. 2147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Ajmer (Raj) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of S.B.B.J. Jaipur and their workman, which was received by the Central Government on the 17-7-97.

[No. L-12012/06/96-IR(B-I)]
P. J. MICHAEL, Desk Officer

न्यायालय श्रम न्यायाधीश एवं औद्योगिक न्यायाधिकरण, अजमेर (राज०)

सी० आई० बी० आर० नं० 6/97

रेफरेंस नं० एल-12012/06/96 आई०आर०बी०-1 (दि० 25-3-97 जोनल सेक्रेटरी, अखिल भारतीय एस०बी० बी०जे० कर्मचारी संघ द्वारा-सुरेना मार्केट ब्रांच-पाली मारवाड़

....प्रार्थी

बनाम

मैनेजिंग डायरेक्टर, एस०बी०बी०जे० हैड ऑफिस, तिलक मार्ग, जयपुर

...अप्रार्थी

समक्ष

श्री हरिसिंह यू० अरनानी, आर०एच०जे०एस०

पीठासीन अधिकारी

प्रार्थी की ओर से श्री ललित शर्मा। (बहस के दिन) अप्रार्थी की ओर से श्री बी०बी० पचलंगिया।

दिनांक 05-7-97

अवार्ड

1. केन्द्र सरकार द्वारा प्रेषित विवाद इस प्रकार है :—

"Whether the action of the Regional Manager, SBBJ Jodhpur Zone in application of Department Clause on Sh. Sharwan Kumar vide their letter dated 26th October, 1995 for the post of Head Cashier Category 'D' at Parbatsar is legal and justified ? If not, what relief the concerned workman is entitled to ?"

2. प्रार्थी श्रवणकुमार द्वारा मैनेजिंग डायरेक्टर, एस. बी.बी.जे. हैड आफिस, तिलक मार्ग, जयपुर (जिसे आगे से संक्षेप में नियोजक कहेंगे) के विरुद्ध प्रस्तुत स्टेटमेंट ऑफ क्लेम के सुसंगत तथ्य संक्षेप में इस प्रकार है :—

(1) यह कि प्रार्थी श्रवण कुमार नियोजक बैंक की मदार शाखा, अजमेर में प्रधान रोकड़िया श्रेणी "डी" के पद पर कार्यरत था।

(2) यह कि उपमहाप्रबंधक अंचल कार्यालय, जोधपुर द्वारा नियोजक बैंक की परबतसर शाखा हेतु योग्य कर्मचारियों से डी श्रेणी के प्रधान रोकड़िया पद की रिक्ति को भरने हेतु आवेदन पत्र मांगे गये जिसके लिये प्रार्थी ने आवेदन किया और वह उसके लिये योग्य था।

(3) यह कि प्रार्थी का वरीयता सूची में प्रथम स्थान होने के साथ-साथ उपयुक्त पाये जाने पर क्षेत्रीय प्रबंधक ने पत्र दि. 12-7-95 द्वारा उसका प्रधान रोकड़िया श्रेणी डी परबतसर शाखा हेतु चयन कर प्रार्थी को उसकी सूचना दी और उस पत्र में यह उल्लिखित किया गया कि उसे परबतसर शाखा हेतु कार्य मुक्त करने की व्यवस्था की जाय।

(4) यह कि जब नियोजक की जानकारी में यह तथ्य आया कि प्रार्थी कर्मचारी संघ का एक सक्रिय सदस्य है तब शाखा प्रबंधक मदार शाखा ने प्रार्थी को परेशान करने, आर्थिक नुकसान पहुंचाने और संगठन को तोड़ने की दृष्टि से संगठन की सदस्यता छोड़ने के लिए उस पर अनुचित दबाव डाला जिसका विरोध करने का परिणाम यह निकला कि उसे 26-10-95 तक परबतसर शाखा के लिए भार-मुक्त नहीं किया गया।

(5) यह कि तत्पश्चात नियोजक द्वारा स्थिति प्रकट की गयी कि प्रार्थी पर पदोन्नति के लिए लगायी गयी वर्जन-अवधि (ई श्रेणी) के लिए अभी पूरी नहीं हुई है। अतः स्थानांतरण आदेश को निरस्त समझा जाय।

(6) यह कि चूंकि वर्जन-अवधि नियमानुसार और पत्रानुसार केवल "ई" श्रेणी के लिए प्रभावी थी न कि "डी" श्रेणी के लिए अतः "डी" श्रेणी पद के लिए वर्जन-अवधि लागू करना नियोजक का एक अवैधानिक और अनुचित कार्य था।

(7) प्रार्थी ने नियोजक की कार्यवाही को अनुचित और अवैध घोषित करते हुए प्रार्थी को डी श्रेणी के प्रधान रोकड़िया पद पर चयन की तिथि से दि. 12-7-95 से उस पद के लिए देय भत्ते का भुगतान मय ब्याज कराने और परबतसर शाखा हेतु भार-मुक्त करने का अनुतोष चाहा है।

3. नियोजक द्वारा प्रस्तुत क्लेम के उत्तर का तात्विक सार यह है कि प्रार्थी नियोजक की सरवाड़ शाखा में प्रधान रोकड़िया "डी" श्रेणी के पद पर सेवारत है और दि. 31-5-95 को श्री त्रिपाठी के सेवानिवृत होने के कारण रिक्त पद को भरने हेतु आवेदन पत्र मांगने थे किन्तु त्रुटि-वश पत्र 15-3-95 में ई श्रेणी के स्थान पर "डी" श्रेणी टाईप हो गया। प्रधान रोकड़िया ई श्रेणी के पद पर प्रार्थी को पदोन्नति नहीं दी जा सकती थी क्योंकि उन्हें रायपुर मारवाड़ शाखा में रोकड़िया ई श्रेणी के पद पर पदोन्नत कर पदस्थापित किया गया था किंतु प्रार्थी ने ज्वाईन नहीं किया। अतः दो वर्ष की अवधि के लिए "ई" श्रेणी में उनकी पदोन्नति से उन्हें बैंक के सरक्यूलर दि. 29-6-92

के अनुरूप विचार कर दिया गया और प्रार्थी "ई" श्रेणी रोकड़िया परवतसर शाखा के योग्य नहीं था और वहां "ई" श्रेणी का पद था । प्रार्थी डी श्रेणी में पद के लिए योग्य था किंतु परवतसर शाखा में "ई" श्रेणी के पद पर उसे पदोन्नत नहीं किया जा सकता था । द्वेष-भाव या षड्यंत्र-पूर्वक हटाने के आरोप का नियोजक ने खंडन किया है ।

4. प्रार्थी श्रवणकुमार ने स्वयं को साक्ष्य में पेश किया है और नियोजक की ओर से प्रबंधक श्री बी. डी. पचभंगिया को पेश किया गया है । मैंने उभयपक्ष के तर्क सुने व पत्रावली का सावधानी से अवलोकन किया । प्रार्थी के विद्वान प्रतिनिधि ने मेरे समक्ष निम्न तर्क प्रस्तुत किये :—

(1) यह कि नियोजक ने टाईप की त्रुटि का जो सहारा लिया है उसका कोई आधार नहीं बताया है और वह टाईप की त्रुटि नहीं थी किंतु नियोजक की बदनीयती थी । इसके अलावा बैंक का परिपत्र यह कहता है कि चाहे गलती भी हो गयी हो तब भी भत्ता नियोजक को देना होगा ।

(2) यह कि प्रार्थी पर "डी" श्रेणी के लिए कोई वर्जन लागू नहीं था नियोजक प्रार्थी को "ई" श्रेणी के संदर्भ में डिबार होना मानते है किंतु "ई" श्रेणी के कथित विवाद के कारण "डी" श्रेणी के लिए प्रार्थी का चयन गलत हो यह स्वीकार किये जाने योग्य स्थिति नहीं है और स्वयं नियोजक का यह परिपत्र है कि डी श्रेणी की कोई वर्जन की स्थिति नहीं थी और प्रार्थी को भार-मुक्त न करने के बारे में पुनः बोध के परिणामस्वरूप आधारहीन कारण बताया और यदि वास्तव में कोई टंकण की त्रुटि रह गयी थी तब शुद्धि-पत्र जारी किया जा सकता था और साढ़े पांच माह बाद कथित त्रुटि की ओर नियोजक का ध्यान गया जबकि इससे पहले नियोजक ने तीन पत्र लिखे थे तब इस बारे में कोई जिक्र नहीं किया गया था ।

5. नियोजक की ओर से मेरे समक्ष निम्न तर्क प्रस्तुत किये गये :—

(1) यह कि परवतसर शाखा में पद "ई" श्रेणी का 1993 में क्रमोन्नत कर दिया गया था जिस संबंधी प्रदर्श एम-1 है ।

(2) यह कि दिनांक 17-8-93 को "ई" श्रेणी प्रधान रोकड़िया श्री आर० एस० त्रिपाठी को लगाया गया जो 31-5-95 को सेवा नियुक्त हुए ।

(3) यह कि तत्पश्चात् क्षेत्रीय प्रबंधक ने 6-3-95 को "ई" श्रेणी के पद भरने के लिए ही प्रबंधक (कार्मिक) को लिखा था ।

(4) यह कि सामान्य प्रक्रिया के तहत प्रार्थी श्रवण कुमार को पदोन्नति किया गया था और गलती से आदेश में "ई" श्रेणी के बजाय डी श्रेणी टाईप हो गया ।

(5) यह कि चूंकि परिपत्र में गलती से "डी" श्रेणी टाईप हो गया था और प्रार्थी "डी" श्रेणी की पात्रतायें रखता था । अतः "डी" श्रेणी में उसकी पदोन्नति के आदेश जारी कर दिये गये थे ।

(6) यह कि बाद में 26-10-95 से पूर्व जब यह ध्यान में आया कि पद ई श्रेणी का है तो प्रार्थी को तदनुसार सूचित किया गया और प्रार्थी को नियोजक ने यह लिखा "ई" श्रेणी का वर्जन लागू है । अतः स्थानांतरण आदेश निरस्त किया गया ।

(7) यह कि बाद में परवतसर शाखा में "ई" श्रेणी के प्रधान रोकड़िया को लगाया गया। यह आदेश 11-1-1996 को किया गया है वहां पहले और बाद में "ई" श्रेणी का ही रिक्त पद उपलब्ध था।

(8) यह कि नियोजक बैंक के यहां प्रचलित व्यवस्था के तहत जिस दिन परिपत्र जारी होता है उसी दिन जो पात्र होते हैं उन्हें सूची में सम्मिलित किया जाता है और उस दिन प्रार्थी "ई" श्रेणी के लिए पात्र नहीं था और इस संबंधी प्रलेख प्रदर्श डब्ल्यू-1 है जिसमें गलती से "डी" टंकण हो गया जबकि ई श्रेणी टंकित होना चाहिए था ।

(9) यह कि नियोजक के यहां विशेष भत्ते वाले पद अखिल भारतीय नियोजक बैंक कर्मचारी समन्वय समिति की सहमति से समझौते के अनुसार भरे जाते है और भूल-चूक होने पर उत्पन्न कठिनाई के निवारण के लिए उस समिति से संपर्क करके मामला सुलझाया जाता है और कभी-कभी मौखिक सहमति भी प्राप्त कर ली जाती है ।

(10) यह कि जब कोई पद क्रमोन्नत होता है और नीचे के पद वाले को पद स्थापित किया जाता है तो उस स्थिति में "सरप्लस" की स्थिति उत्पन्न हो जाती है कि ऐसे व्यक्ति को कहां समायोजित किया जाये और इसक्रम में या तो पदोन्नति की जाये या स्थानांतरण किया जाये और ऐसी सूरत में प्रार्थी को भार-मुक्त न करना ज्यादा उचित और सुविधाजनक समझा गया समन्वय समिति के साथ हुए समझौते की प्रति भी पेश की गयी है जिससे स्थिति स्पष्ट होगी और केवल टंकण की त्रुटि के कारण प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

6. हम उभयपक्ष द्वारा प्रस्तुत तर्कों पर विचार करने से पूर्व उपलब्ध साक्ष्य का अवलोकन करेंगे। प्रार्थी श्रवण कुमार ने अपने बयान में मुख्य रूप से यह कहा है कि नियोजक बैंक ने विज्ञप्ति प्रदर्श डब्ल्यू-1 निकाली इसने प्रदर्श 2 "डी" श्रेणी के लिए आवेदन किया और उसी श्रेणी में उसकी नियुक्ति हुई जो प्रदर्श डब्ल्यू-3 है और उसी में "डी" श्रेणी के लिए परवतसर शाखा हेतु भारमुक्त करने की बात लिखी गयी है किंतु उसे प्रदर्श

डब्ल्यू-4 प्रलेख के जरिये भार मुक्त नहीं किया गया। "ई" श्रेणी "डी" श्रेणी से उच्च है और इस "डी" श्रेणी पर कोई वर्जना लाग नहीं था और उसका यह कहते हुए चयन निरस्त कर दिया कि उस पर "ई" श्रेणी के हैड कैशियर का वर्जन लागू होता है इसलिए "डी" श्रेणी के लिए उपयोगी नहीं है। प्रतिपरीक्षा में इस गवाह ने कहा है कि उससे पहले "ई" श्रेणी के लिए मारवाड़ की किसी शाखा के लिए आवेदन किया था जहां उसका चयन भी हो गया था किंतु मां और पत्नी की बीमारी की वजह से उसने ज्वाईन नहीं किया और प्रमाणपत्र दिया था प्रार्थी के अनुसार पाली में नियोजक की अन्य शाखा में पूर्व में "ई" श्रेणी का प्रधान रोकड़िया का पद था जिसे वर्तमान में "डी" श्रेणी का कर दिया गया और नियोजक ने 13-4-95 को प्रदर्श एम-1 कोई आदेश निकाला हो तो उसे इसकी जानकारी नहीं है और उसे इस बात की भी जानकारी नहीं है कि परबतसर शाखा में पहले "ई" श्रेणी का प्रधान रोकड़िया था या नहीं। प्रदर्श एम-2 और प्रदर्श एम-3, 4 के बारे में यह गवाह अपनी अनभिज्ञता प्रकट करता है उसके अनुसार "ई" श्रेणी के लिए 24-8-93 से 23-8-95 तक ही प्रतिबंध लागू था और यह "डी" श्रेणी के लिए लागू नहीं था। इस गवाह को अगस्त 1996 में "डी" श्रेणी में पदोन्नत कर दिया गया है और अक्तूबर में वह सरवाड़ में कार्यरत होना बताता है।

7. नियोजक के गवाह श्री पंजलंगिया ने अपनी मुख्य परीक्षा में कहा है कि परबतसर शाखा में 1993 में प्रधान रोकड़िया के पद को अप-ग्रेड कर "ई" श्रेणी का कर दिया गया था और सहमति प्राप्त कर श्री आर. एस. त्रिपाठी को वहां "ई" श्रेणी में प्रधान रोकड़िया लगाया गया था और उनके सेवा-निवृत्त होने पर समन्वय समिति के साथ हुए समझौतों के तहत श्री त्रिपाठी के रिक्त स्थान को भरने के लिए पत्र जारी किये गये जिसमें गलती से "ई" के बजाय "डी" छप गया और बाद में परबतसर में श्री त्रिपाठी के स्थान पर श्री गोपाल कृष्ण व्यास को "ई" श्रेणी प्रधान रोकड़िया के पद पर लगाया गया और क्योंकि प्रार्थी रायपुर मारवाड़ में "ई" श्रेणी के पद पर सहमति के बावजूद वहां नहीं किये अतः सुसंगत समय में उस पर वर्जन प्रभावी था। अगर यह विज्ञप्ति "ई" श्रेणी के लिए निकलती तब भी श्रमिक उस समय पात्रता नहीं रखता था और टाईप की त्रुटि के कारण और परबतसर में "डी" श्रेणी का पद रिक्त नहीं होने के कारण प्रार्थी को नहीं लगाना न्यायोचित था और बाद में जब "डी" श्रेणी का रिक्त स्थान सरवाड़ में हुआ तब प्रार्थी को बिना भेद-भाव या दुर्भावना के नियुक्ति दे दी गयी। इस गवाह के अनुसार प्रदर्श एम-3 में जो कुछ लिखा गया है वह सही है। प्रदर्श डब्ल्यू-6 किस शाखा द्वारा जारी किया गया उसकी इस गवाह को जानकारी नहीं है। इस गवाह ने स्वीकार किया है कि "डी" श्रेणी का वर्जन प्रार्थी पर लागू नहीं होता और यदि "डी" श्रेणी का भत्ता "ई" श्रेणी से कम है तो उस पर वर्जन अवधि लागू नहीं होती।

8. साक्ष्य का विश्लेषण करने पर जो स्थिति उभरकर आती है वह यह है कि प्रार्थी ने दि० 5-4-95 को परबतसर शाखा के लिए "डी" श्रेणी के लिए आवेदन पत्र दिया था जो प्रदर्श डी-2 है। प्रार्थी का उसे सुयोग्य पाते हुए चयन कर लिया गया किन्तु उसे परबतसर शाखा के लिए इसलिए रिलीव नहीं किया गया क्योंकि वहां "डी" श्रेणी के पद उपलब्ध न होकर "ई" श्रेणी का पद उपलब्ध था और दि० 13-4-93 को परबतसर में जरिये एम-1 "ई" श्रेणी का पद अमोन्नत कर दिया गया था। ऐसा प्रतीत होता है कि प्रार्थी को इस प्रदर्श एम-1 की जानकारी नहीं थी वर्ना वह "ई" श्रेणी के लिए वर्जना परिधि में होने से संभवतया परबतसर शाखा के लिए आवेदन ही नहीं करता जैसा कि नियोजक के गवाह श्री पंजलंगिया ने अपनी साक्ष्य में कहा है कि परबतसर शाखा में श्री आर०एस० त्रिपाठी प्रधान रोकड़िया को "ई" श्रेणी में लगाया गया था और 31-5-95 को सेवा निवृत्त होने पर उनका स्थान भरने के लिए योग्यता रखने वाले व्यक्तियों को लेने बाबत पत्र जारी किया गया था। श्री पंजलंगिया की साक्ष्य से यह प्रकट होता है कि मूल गलती वहां हुई जब प्रधान रोकड़िया की "ई" श्रेणी के बजाय "डी" टंकित हो गया और यह परिपत्र प्रदर्श डब्ल्यू-1 है जिसमें कथित टंकण की गलती से "ई" के बजाय "डी" टंकित हो जाना प्रकट होता है। प्रार्थी ने इसी प्रदर्श डब्ल्यू-1 के रेस्पोंस में आवेदन दिया था वह स्थिति असंदिग्ध है कि प्रार्थी का सुसंगत समय में "ई" श्रेणी के पद के संबंध में वर्जना प्रावधान लागू था। अतः ऐसी सूरत में उसे यदि परबतसर शाखा भेज दिया जाता जहां "ई" श्रेणी की पोस्ट होने से प्रार्थी उसके लिए वर्जना प्रावधान के कारण पात्र नहीं था तो उसे वहां से वापस भेज दिया जाता। पत्रावली के समग्रता पूर्वक अवलोकन से मैं संतुष्ट हूं कि परबतसर शाखा में तत्कालीन समय में "डी" श्रेणी का पद उपलब्ध ही नहीं था क्योंकि वह पद 1993 में ही अमोन्नत होकर "ई" में परिवर्तित हो चुका था। अतः बैंक को टंकण या सम्बहन हुई त्रुटि के कारण प्रार्थी को कानूनी अधिकार प्रोन्नति बावत प्राप्त नहीं हो जाता। क्लेम में यह कथन प्रकट किया गया है कि प्रार्थी को जान-बूझकर कपटपूर्ण मंशा से और उसके यूनियन की गतिविधियों में सक्रिय योगदान के कारण उत्पीड़ित किया गया किंतु ऐसा कोई कथन प्रार्थी ने अपने बयान में नहीं किया है और न ही नियोजक के गवाह से उत्पीड़न की स्थिति के बारे में कोई स्पष्ट प्रश्न पूछा गया है। अतः यूनियन की गतिविधि या उत्पीड़न के कारण प्रार्थी को जान-बूझकर नुकसान कारित किया गया हो यह स्थिति नहीं है किंतु इतना स्पष्ट है कि प्रार्थी को स्पेशल भत्ते संबंधी प्रलेख के तहत जो समन्वय समिति के साथ समझौते की उपज है और जिसे सुविधा के लिहाज से हम प्रदर्श डब्ल्यू-7 अंकित करते हैं; आने वाले महीने के जन से पहले ही रिलीव किया जाना चाहिए था और ऐसा नहीं करने पर इस प्रलेख

में यह प्रावधान किया है कि प्रार्थी को स्पेशल भत्ता मिलेगा। जब इस सरक्यूलर को पढ़ते हैं तब इससे यह आशय प्रकट होता है कि यदि किसी कर्मचारी की पदोन्नति हो गयी है और विभाग प्रशासनिक या अन्य कारणों से उसे आगामी महीने के अंदर रिलीव नहीं कर पाता तब कर्मचारी की आर्थिक नुकसान न हो इसलिए निर्धारित अवधि के बाद उसे स्पेशल भत्ता दिये जाने का प्रावधान किया गया है। इस मामले की विशिष्ट परिस्थितियों में और इस पृष्ठभूमि में कि प्रार्थी का "डी" श्रेणी में विधिवत् चयन हो गया और "डी" श्रेणी पर कोई वर्जना प्रावधान लागू नहीं था किंतु दुर्भाग्य से दोनों पक्ष की अनभिज्ञता के कारण परबतसर ब्रांच में, जिसके लिये प्रार्थी ने "डी" श्रेणी समझकर आवेदन किया था और जहां "डी" के बजाय "ई" श्रेणी का ही पद उपलब्ध था, हम नियोजक को यह आदेश तो नहीं दे सकते कि वह प्रार्थी का सुसंगत समय में "ई" श्रेणी में वर्जना लागू होने के बावजूद पदोन्नति दे और न ही नियोजकों यह को आदेश दिया जा सकता है कि परबतसर शाखा में बैंक की त्रुटि के कारण "ई" के बजाय "डी" श्रेणी दर्शाने मात्र से "ई" श्रेणी को पदावनत कर "डी" में बदल दिया जाये ताकि फिर से प्रार्थी को लगाया जाये। ऐसा करना न तो न्यायसंगत होगा और न ही व्यवहारिक होगा किंतु प्रार्थी की पदोन्नति के बाद उसे निर्धारित समय में रिलीव न करने का कोई संतोषजनक औचित्य न्यायालय के समक्ष प्रस्तुत नहीं हुआ है। अतः यह न्यायोचित प्रतीत होता है कि प्रदर्श डब्ल्यू-7 के आलोक में उसे जब से रिलीव किया जाना था तब से उस तारीख तक का स्पेशल भत्ता मिलना चाहिए जब तक नियोजक बैंक ने उसे अपनी इस त्रुटि का अहसास कराया कि परबतसर में "डी" श्रेणी का पद उपलब्ध नहीं है और "ई" श्रेणी के संदर्भ में प्रार्थी पर डिबारमेंट क्लांज लागू था। अतः प्रेषित विवाद का अधिनिर्णय इस प्रकार किया जाता है कि क्षेत्रीय प्रबन्धक स्टेट बैंक ऑफ बीकानेर एंड जयपुर, जोधपुर जोन द्वारा 26-10-95 के पत्र द्वारा परबतसर ब्रांच के लिए प्रार्थी की "ई" श्रेणी प्रधान रोकड़िया के लिए वर्जना की स्थिति का उल्लेख करने की कार्यवाही उचित नहीं कही जा सकती किंतु साक्ष्य के उक्त विश्लेषण एवं तथ्यों को दृष्टिगत रखते हुए यह व्यवस्था दी जाती है कि प्रार्थी को प्रदर्श डब्ल्यू-7 के आलोक में कार्य-मुक्त करने की निर्धारित तारीख से स्पेशल भत्ता उस तारीख तक का प्राप्त करने का अधिकार होगा जब उसे बैंक का "डी" श्रेणी संबंधी त्रुटि का समाधान करने बाबत सूचना प्राप्त हुई।

दिनांक 5 जुलाई, 1997

हरिसिंह यू. अस्तानी न्यायाधीश
श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण,

अवार्ड आज दि. 5 जुलाई, 1997 को लिखाया जाकर खुले न्यायालय में सुनाया गया। अवार्ड की प्रति नियमानुसार राज्य सरकार को छापने प्रकाशनार्थ प्रेषित की जावे।

[हरिसिंह यू. अस्तानी
न्यायाधीश,
श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण,
अजमेर

नई दिल्ली, 13 अगस्त, 1997

का. आ. 2148.—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित है कि इंडिया गवर्नमेंट मिंट, मुंबई को जो औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची में निर्दिष्ट है उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवा घोषित किया जाए;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 की धारा 2 के खंड (न) के उपखंड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस—11017/14/97—आई आर (पी एल)]
एच. सी. गुप्ता, अवर सचिव

New Delhi, the 13th August, 1997

S.O. 2148.—Whereas the Central Government is satisfied that the public interest requires that the services in the India Government Mint, Mumbai which is covered by item 11 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act :

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act or a period of six months.

[S-11017/14/97-IR(PL)]

H. C. GUPTA, Under Secy.

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